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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 272.

W. W. CREHORE, PLAINTIFF IN ERROR,

vs.

THE OHIO AND MISSISSIPPI RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED MAY 24, 1886.

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INDEX.

	Original.	Print.
Citation	*a*	1
Proof of service of citation	*b*	1
Writ of error	*c*	1
Caption	1	2
Order to docket cause	1	2
Transcript from State court	2	2
Petition	3	3
Bond for costs	17	7
Summons	17	7
Sheriff's return	18	7
Order to pass case	19	8
Order to file exhibits to petition	19	8
Exhibits to Petition—Petition of O. & M. R'y Co. in case of Garrett *vs.* O. & M. R'y Co.	20	8
Petition of Wm. M. Crehore in case of Garrett *vs.* O. & M. R'y Co.	26	11
Order granting right to sue in case of Garrett *vs.* O. & M. R'y Co.	32	13
Orders to pass case	33	13
Order that suit proceed in name of W. W. Crehore as plaintiff	35	14
Order for removal	35	14
Petition for removal	36	15
Bond for removal	38	16
Clerk's certificate	40	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 18, 1888.

	Original.	Print
Demurrer to petition filed and submitted	40	17
Demurrer	41	17
Order overruling demurrer	41	17
Opinion on demurrer	17	42
Order filing answer	49	19
Answer	49	19
Order filing reply	76	29
Reply	76	29
Order taking motion to file amended and supplemental answer under advisement	81	30
Order filing amended and supplemental answer	82	31
Trial commenced	82	31
Amended and supplemental answer	82	31
Order to exclude from jury evidence of plaintiff	85	32
Verdict	86	32
Judgment	86	32
Bill of exceptions	86	33
Bond	90	34
Clerk's certificate	91	35

a UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

To the Ohio and Mississippi Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the 11th day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the said district of Kentucky, wherein W. W. Crehore is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 3rd day of April, in the year of our Lord 1886, and of our Independence the 110th.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JNO. W. BARR, *Judge.*

b Executed the within citation May 8th, 1886, by delivering a true copy thereof to Charles H. Gibson, the attorney of record of the defendant in error, The Ohio & Mississippi Railway Company.

A. J. GROSS, *U. S. M.*,
By WALLACE GRUELLE, *D. M.*

Marshal's fee, $2.

c UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

The President of the United States of America to the judges of the circuit court of the United States for the Kentucky district, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between W. W. Crehore, plaintiff, and The Ohio and Mississippi Railway Company, defendant, a manifest error hath happened, to the great damage of the said W. W. Crehore, as by his complaint appears, and it being fit that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of the next October term of the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Louisville, in said district, this 3rd day of April, A. D. 1886, and of the Independence of the United States the 110th.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL,
C. C. C., K. D.

Allowed by—
JNO. W. BARR, *Judge.*

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at Louisville on Monday, February 15th, 1886.

Present: Honorable Jno. W. Barr, judge of the United States for the district of Kentucky.

W. W. CREHORE, Plaintiff,
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY, Defendant.

Be it remembered that heretofore, to wit, on the 14th day of February, 1885, came the plaintiff, by Brown & Davie, his attorneys, and filed copies of process and other proceedings had in the Louisville law and equity court in this case.

2 Thereupon the plaintiff, by his said attorneys, entered his appearance herein, and on his motion it is ordered that the clerk do place this case upon the docket of this court and that it be tried in its regular order.

The copy of the proceedings above referred to is as follows, to wit:

STATE OF KENTUCKY, *County of Jefferson:*

Pleas before the Honorable John G. Simrall, judge of the Louisville law and equity court, at a court held at the court-house, in the city of Louisville, on the — day of ——, —.

W. W. CREHORE, Who Sues by His Next Friend, JOHN MASON BROWN, and JOHN MASON BROWN, Next Friend of said W. W. Crehore.

vs.

THE OHIO & MISSISSIPPI RAILWAY COMPANY.

Parties.

Be it remembered that heretofore, to wit, on the 14th day of July, 1884, came plaintiffs, by counsel, and filed in the
3 clerk's office of the court aforesaid *his* petition herein; which petition, filed as aforesaid, is in words and figures as follows, to wit:

Petition.

Louisville Law & Equity Court.

W. W. CREHORE, Who Sued by His Next Friend, JOHN MASON BROWN, and JOHN MASON BROWN, Next Friend of said W. W. Crehore, Plaintiffs,

vs.

THE OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

The plaintiffs, W. W. Crehore, who sues by his next friend, John Mason Brown, and John Mason Brown, next friend of said W. W. Crehore, state that the plaintiff, W. W. Crehore, is under the age of twenty-one years and resides in the city of Cleveland, in the State of Ohio; that the plaintiff, W. W. Crehore, has no statutory guardian resident within the State of Kentucky or now to be found within the State of Kentucky, nor has any such statutory guardian ever been qualified within the State of Kentucky or elsewhere;
4 that the plaintiff, John Mason Brown, is a resident of the county of Jefferson and State of Kentucky and is the next friend of the infant plaintiff, W. W. Crehore, and acts as such at the request of said W. W. Crehore and of his father, John D. Crehore, who is a resident of Cleveland, Ohio, and said next friend is free from any disabilities to sue herein.

Plaintiffs state that heretofore, to wit, on the 5th day of January, 1884, the infant plaintiff, W. W. Crehore, was a passenger between the city of St. Louis, Missouri, and the city of Louisville, Kentucky, upon a certain railway passenger train belonging to and being part of the equipment of and operated upon and over the line of the Ohio & Mississippi railway, which is the railway of the defendant herein, he, the said plaintiff, W. W. Crehore, having fully paid his fare for passage between said cities and being then and there such traveller and passenger by and with the consent of his father, John D. Crehore.

The said train was controlled by and was under the au-
5 thority of one John M. Douglass and his agents, employés, and assistants, the said John M. Douglas then and there being and theretofore having been the receiver of the said railway and of all the properties, trains, equipments, &c., and who was then operating said railway as such receiver. Such receivership was under and by virtue of the consent, order, and appointment of the Louisville chancery court of the State of Kentucky, made in the suit of Robert Garrett *vs.* The Ohio & Mississippi Railway Company, No. 30971, on the files of said court, and the said Douglass had also been heretofore appointed such receiver and was then acting as such receiver under similar orders of appointment made by the courts of the States of Indiana, Illinois, and Ohio, and property of the said Ohio & Mississippi railway then and there existed in and was operated in each of said States of Ohio, Indiana, Illinois, and Kentucky, and the said receiver, John M. Douglass, was then and there operating said railway properties as a continuous line and as an en-
6 tirety for the benefit of the defendant corporation herein, The Ohio & Mississippi Railway Company, and of the creditors

thereof, under supervision of said courts and under the supervision of the Louisville chancery court aforesaid, and the said Louisville chancery court had jurisdiction of the said John M. Douglass, receiver as aforesaid.

Plaintiffs state that afterwards, on the 2d day of April, 1884, an order was made and entered by the Louisville chancery court in the action No. 30971 aforesaid of Robert Garrett *vs.* The Ohio & Mississippi Railway Company on the motion of the now defendant, The Ohio & Mississippi Railway Company, which said defendant was the defendant *was the defendant* to said action in the chancery court, by the terms of which order the said receiver, John M. Douglass, was ordered and directed to turn over and delivered to the defendant, The Ohio & Mississippi Railway Company, all the property and assets in its hands as such receiver and discharging the said Douglass from his duties as such receiver. The said order was
7 made upon the condition therein embodied and set forth that the defendant, The Ohio & Mississippi Railway Company, should be responsible for and answer for and make good and discharge all the liabilities and obligations incurred in respect of and because of said railway property or any part thereof and the operation thereof or any part thereof during the receivership of said John M. Douglass.

And the defendant, The Ohio and Mississippi Railway Company, did agree, of record in the action aforesaid in chancery, to stand good for and satisfy any and all liability which might be found to exist or which might be established as growing out of the operations of said railway property or any part thereof during the receivership of the said John M. Douglass, and did, in pursuance of said order and of its said acquiescence thereto, receive all of the said property from the said receiver, and now has possession thereof under said order and on its conditions.

8 Plaintiffs state that the plaintiff, W. W. Crehore, infant plaintiff herein, and John D. Crehore, his father, after the entry of the said order, applied to the honorable the Louisville chancery court for permission to establish as against the defendant, The Ohio & Mississippi Railway Company, the liability hereinafter set forth and complained of, and to have the same ascertained by reference to a court of law, and were permitted so to do and to bring this suit, in connection with the next friend of the said W. W. Crehore, in pursuance of these said permissions so given. The said permission was by an order of the Louisville chancery court, entered in said action of Robert Garrett *vs.* The Ohio & Mississippi Railway Company, No. 30971, and of the application for said order and the granting thereof the defendant, The Ohio & Mississippi Railway Company, hade notice. Copies of all the said orders will be filed if required, and when filed are prayed to be taken as part of this petition.

The plaintiffs state that on the 5th day of January, 1884,
9 and while the railway property aforesaid (which railway property was and is now the property of the Ohio & Mississippi Railway Company) was being operated as aforesaid by John M.

Douglass, receiver as aforesaid, and while the infant plaintiff, W. W. Crehore, was a passenger upon a train operated and upon said Ohio & Mississippi railway, under the control of the said John M. Douglass, receiver, and his assistants and subordinates, he, the plaintiff, W. W. Crehore, was greatly injured by and because of and through the wilful neglect of the said John M. Douglass, receiver, and his assistants, agents, and servants then in charge of said train upon and over said railway and of the said railway and its equipments and property operated as aforesaid. They say that the car in which the plaintiff, W. W. Crehore, was a passenger was the rear passenger car of a certain train then and there controlled and operated as aforesaid, which was being drawn from St. Louis, Missouri, to
10 Louisville, Kentucky, and was at or near the town of Charlestown, Indiana, and that the train to which said car was attached was, by the assistants, agents, and servants of the said John M. Douglass, receiver, who had charge of the same (and who had charge of the operations of the railway train as aforesaid at the point aforesaid and all along the line aforesaid), so placed upon the track and so managed and controlled by them that another certain passenger train, operated in like manner by the said John M. Douglass, receiver, and his assistants, agents, and employés, and being a train connected with and forming a part of the equipment of the Ohio & Mississippi railway and moving towards Louisville, Kentucky, ran into the rear of said passenger car and demolished said car and greatly injured divers persons who were passengers thereon, and crushed the leg of the infant plaintiff, W. W. Crehore, and inflicted upon him gr-evious bodily injuries, all of which was occa-
11 sioned by and occurred through and because of the wilfull neglect of the persons in charge of said trains, and by the wilfull neglect of said John M. Douglass, receiver, and his assistants, agents, and employees in charge of the said trains.

Plaintiffs state that the train which ran into the passenger car as aforesaid and produced the injury herein complained of was propelled at full speed (at least 35 or 40 miles per hour), and was not signalled or warned or cautioned in due or usual and proper manner or at the due or usual or proper time, but was permitted by the said receiver, his assistants, agents, and employés as aforesaid, to run into and crush and telescope the said car, in which the said plaintiff, W. W. Crehore, was then being conveyed as a passenger for fare paid by him as aforesaid.

They say that the said injury occurred because of the wilfull neglect of the said receiver, his assistants, agents, and servants in charge of said train, to place the train conveying the infant plaintiff
12 in a safe position, which could have been done by merely running it off on a switch or side track, and by their wilfull neglect to properly or in due time signal and warn the coming train and causing it to stop, all of which it was then and there the duty of the said receiver, his assistants, agents, and servants, to do, and which was plainly and manifestly then and there necessary for the safety of said train and the passengers thereon, and *and* which required no special skill, nor any other than the most ordinary care,

and the failure to use such precaution and care was wilfull on the part of said receiver and his assistants, agents, and servants then and there in charge of said train as aforesaid, and was wilfull neglect in them and each of them.

Plaintiffs state that the plaintiff, W. W. Crehore, received, at said time and place and from said causes and by reason of the wilfull neglect aforesaid, great injuries, by which his leg was fract-
13 ured in divers places and in a most painful and dangerous manner. The bones protruded from the flesh and have never since united, and he has ever since been and now is a sufferer therefrom, and his wounds have never healed.

He is unable to walk, and has been since the time of the receipt of said injury confined to his bed under sergical treatment. They say that the plaintiff, W. W. Crehore, has suffered great anguish from said injury, as well bodily as mental.

They state that the said W. W. Crehore was at the time of said injury a student at Yale College, and was at the time (it being vacation of his college), by the permission of his father and the college authorities, visiting certain cities, including the city of Louisville, Kentucky, as one of an organization of students known as the Yale Glee Club; that by reason of the injuries aforesaid the plaintiff, W. W. Crehore, has been unable, since the said 5th day of January, 1884, and he is still unable, to rejoin his class in college or to
14 pursue his studies and has lost his position in his class and has been greatly injured in his scholarship, and his education has been retarded thereby, and he will never be able to resume his studies for a great while, all of which is in consequence of the injuries received as aforesaid, and all of which has been caused by the wilful neglect of the said John M. Douglass, receiver, and of his assistants, agents, and employés in charge of the trains as aforesaid operated as aforesaid over the line of the Ohio & Mississippi railway.

They are advised and charged the fact to be that the injury so received is of so grave a nature that no perfect recovery can ever be had, and that the capacity of the plaintiff, W. W. Crehore, to earn his living by bodily labor is permanently impaired and diminished.

They charge that the said injury is one of the liabilities contemplated by the undertaking of the defendant, The Ohio & Mississippi Railway Company, as aforesaid, and that The Ohio & Mississippi Railway Company is liable to make good to the plaintiff
15 the damages resulting from and caused by the injuries aforesaid.

They state that the plaintiff, W. W. Crehore, by and because of the personal injury aforesaid and the suffering and permanent disability by him incurred caused by the wilfull neglect of the said receiver, his assistants, agents, and employees as aforesaid operating the train as aforesaid, has been injured and damaged to the full sum and amount of twenty thousand dollars ($20,000.00).

Wherefore plaintiffs pray judgment against the defendant, The Ohio & Mississippi Railway Company, in the sum of twenty thousand dollars ($20,000.00), and for costs and all proper relief.

BROWN & DAVIE, *p. q.*

John Mason Brown states that he is the next friend of the infant plaintiff, W. W. Crehore, and acts as such herein at the request of the said infant plaintiff and of his father, John D. Crehore; that said W. W. Crehore is an infant under the age of twenty-one
16 years, and has no guardian appointed in or residing in or now to be found in the State of Kentucky.

That the infant plaintiff, W. W. Crehore, and his father, John D. Crehore, reside in the city of Cleveland, in the State of Ohio, and that both the said plaintiff, W. W. Crehore, and his father, the said John D. Crehore, are and each of them is now absent from the county of Jefferson and State of Kentucky, and have neither of them any agent other than this affiant within said county or State, and that this affiant consents to become and acknowledges himself bound for the costs of this action.

JOHN MASON BROWN.

Subscribed and sworn to before me by John Mason Brown this 14th day of July, 1884.

R. A. BATMAN,
N. P. J. C., Kentucky.

And upon the filing of said petition as aforesaid a bond for costs was executed and filed; which bond for costs, filed as aforesaid, is in words and figures as follows, to wit:

17 *Bond for Costs.*

Jefferson Court of Common Pleas.

W. W. CREHORE, by, &c., Plaintiff,
vs.
THE OHIO & MISS. RAILWAY CO., Defendant. } No. 25150½.

We undertake that the plaintiff, W. W. Crehore, by, &c., shall pay the defendant, The Ohio & Miss. R. W. Co., and to the officers of the court, all costs that may accrue to them in this action, either in the Jefferson court of common pleas or any court to which it may be carried.

July 14th, 1884.

BROWN & DAVIE,
Per R. A. BATMAN.

And upon the filing of said petition as aforesaid a summons was issued, which, together with the officer's return on same, is in words and figures as follows, to wit:

Summons.

The Commonwealth of Kentucky to the sheriff of Jefferson county, Greeting:

You are commanded to summon the Ohio & Mississippi Railway Company to answer a petition filed against it in the Louis-
18 ville law and equity court by W. W. Crehore, who sues by

his next friend, John Mason Brown, and John Mason Brown, next friend of W. W. Crehore, and warn it that upon its failure to answer within twenty days from the service hereof the petition will be taken for confessed, or it will be proceeded against for contempt, and you will make due return of this summons as soon as executed.

Witness John S. Cain, clerk of said court, this 14th day of July, 1884.

JOHN S. CAIN, *Clerk.*

Came to hand July 14th, 1884, at 11.10 o'cl'k a. m. Executed on the Ohio & Mississippi railroad July 22, 1884, by delivering a true copy of the within summons — J. R. Clark, gen. agent, who is the chief officer of said Co. in this county at this time.

J. D. BARBOUR, *S. J. C.*,
By H. L. LEE, *D. S.*

And at a court held as aforesaid on the 29th day of September 1884, the following order was entered, to wit:

19 This day came plaintiffs, by counsel, and filed three exhibits referred to in petition herein, as per order in writing filed. On motion of defendant and by consent, ordered by the court that this case be passed one week on the docket.

Which order, filed as aforesaid, is in words and figures as follows, to wit:

Order.

Louisville Law & Equity Court.

W. W. CREHORE *vs.* O. & M. RAILWAY CO.

Came plaintiff, by counsel, and produced and filed in open court the exhibits referred to in his petition, to wit: 1st. The petition to Louisville chancery court for permission to sue; 2d, the order of Louisville chancery court granting said permission; and, 3rd, the order and judgment of the Louisville chancery court entered 2nd April, 1884, in the suit of Garrett *vs.* O. & M. Railway Co., No. 30971, in said court, and moved that the same be made and treated as parts of the record; which is done.

BROWN & DAVIE.

20 Which exhibit filed as aforesaid is in the words and figures as follows, to wit:

COMMONWEALTH OF KENTUCKY:

Louisville Chancery Court.

ROBERT GARRETT *vs.* OHIO & MISSISSIPPI R. W. CO.

At a court held for the *court* aforesaid on the 2nd day of April, 1884, now comes the Ohio & Mississippi Railway Company and shows to the court, by exhibits filed, that heretofore, on the 17th day of March, 1884, the circuit court of the United States for the district

of Indiana made and entered a decree in the words and figures following—that is to say:

Now comes the Ohio & Mississippi Railway Company, by Charles A. Beecher, and filed its petition offering to make payment of its debts and liabilities and to secure and provide for the liabilities and obligations of the receiver; upon filing which, and for good
21 cause shown, all parties to the cause being represented by their counsel, Mr. Hoadley, Mr. Crawford, Mess. Harrison, Hines & Miller, for the complainant, and Mr. Hendricks and Peckham, for the trustees and cross-complainant, and no one objecting thereto, it is now ordered—

First. That the receiver be, and he is hereby, directed to deliver to the Union Trust Company of New York City, or to an agent in the city of Cincinnati appointed by it for and on account of the Ohio & Mississippi Railway Company, or to the president of the last-named company, all and singular the 415 bonds, with the coupons thereon, of the Ohio & Mississippi Railway Company or the said Union Trust Company, for *it* the amounts heretofore paid by the said receiver or his predecessor for the redemption of said bonds, which said sum shall compose part of the funds of the receiver to be paid as may hereafter be directed by this court.

Second. That the possession of the railway and equipments
22 of the defendant's company shall be delivered by the receiver to said company whenever and as soon as said company shall have complied with the following terms and conditions:

First. The filing with the clerk of this court of the written consent of the complainants or their counsel, of Allen Campbell, trustee, or his counsel, and of the Farmers' Loan and Trust Company or its counsel to the dismissal of this suit.

2. When there shall have been delivered to John M. Douglass, receiver of this court, payable to the said Douglass, for the benefit of whom it may concern, a bond executed by two or more sureties satisfactory to this court in the penal sum of five hundred thousand dollars, conditioned for the payment of all the debts and liabilities contracted or incurred during the receivership of said property under the order of this court and of the circuit court of the United States in Ohio, Illinois, and Missouri ancillary hereto, and of the Louisville chancery court, and also conditioned for the exoneration
23 of said receiver and of his predecessor, John King, Jr., from all liability on account of their respective lawful acts as such receivers, and also conditioned for the payment of costs of this cause, including the counsel and trustee fee allowed to counsel for services herein, the costs of this cause and the fees of counsel and of the trustees for services rendered herein to be paid to the receiver upon written demand made by him upon the obligors, and also conditioned for the payment of all claims adjudged or to be hereafter adjudged by this court or any one of the courts heretofore named as being in the nature of preferential claims against the said property or against any part of it.

And it is further ordered that when and as soon as said conditions shall have been complied with and said railway and equipment de-

livered to said company the receiver shall proceed to apply all and singular the moneys coming into his hands as such receiver to the debts of the receivership and those adjudged and to be ad-
24 judged by this court or any one of the courts heretofore named as payable by him, and shall make report thereon from time to time, to the end that said receivership may be speedily closed and said receiver discharged.

Therefore it is considered, by consent of parties, that upon the performance of the conditions of said decree the possession of the railway and equipment described in said decree, so far as the same are situated in the State of Kentucky, shall be delivered by the receiver to the Ohio & Mississippi Railway Company with the same effect as if the aforesaid order had been entered originally in this cause.

Came John M. Douglass, receiver, by Charles H. Gibson, his counsel, and admitted in open court that the conditions of the decree entered by the circuit court for the United States for the district of Indiana, on the 17th day of March, 1884, in the action of Wm. King *et al. vs.* The Ohio & Mississippi Railway Company (a copy thereof has been filed herein), have been fully complied with by the petitioners in said cause and the Ohio & Mississippi Company.

25 Then came the Ohio & Mississippi Railway Company, by Charles A. Beeler, its counsel, and in open court admitted that John M. Douglass, receiver, had delivered to it the possession of its railway and equipments and all the property belonging to it in the State of Kentucky and within the jurisdiction of this court, as directed by the order entered herein this day.

Thereupon, upon motion of said John M. Douglass, receiver, by his counsel, it is ordered that he be discharged from the performance of all acts and duties as operating receiver herein, and that the defendant, The Ohio & Mississippi Railway Company, shall take hold and operate the property aforesaid in place of said receiver; and, subject to such orders as the court may hereafter make, requiring it to pay claims or liabilities incurred during the receivership or to settle, pay, or discharge any orders or judgments made in favor of settling and satisfying the claims of said receivership as aforesaid, the court retains this cause for such other orders as may appear to the
26 court to be necessary. It is, on motion of said receiver, further ordered that all claims against said receiver arising or that have arisen within jurisdiction of this court for adjudication or other proper action — within sixty days from this date.

A copy.
Attest:

JOHN H. WELLER, *Cl'k*,
By J. G. WALKER,
D. C. Louisville Chancery Court.

Petition.

Louisville Chancery Court.

ROBERT GARRETT, Plaintiff,

vs.

THE OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

Wm. M. Crehore, who is under twenty-one years of age, and who sues by John D. Crehore, file- this their petition by leave of the court, and shows the court that the said Wm. W. Crehore, on the evening of the 5th of January, 1884, was a passenger on a train of the Ohio & Mississippi Railway Company, the same railway company
27 in the record of this action described and referred to, having fully paid his fare as such passenger from St. Louis, Mo., to Louisville, Kentucky; that the said railway was then operated by John M. Douglass, receiver appointed by this court; that at said time and while he was such passenger, for passage money paid, while on his journey from St. Louis, Missouri, to Louisville, Kentucky, he, the said Wm. W. Crehore, was greatly injured by and because of one of the trains of the said railway running into the train and car upon which he was a passenger; that his leg was crushed and injured in a most painful and serious manner, from which injuries he has ever since been under surgical treatment—is now under surgical treatment; that said injury was in no degree caused or contributed to by any neglect, carelessness, or fault on the part of him, the said Wm. W. Crehore, but was caused by the wilful neglect of the persons in charge of said trains, and who were
28 agents and servants of the said John M. Douglass, receiver, operating the said Ohio & Mississippi Railway Company; that no compensation has been made to the said W. W. Crehore, nor to said John D. Crehore, nor to any one for either, in satisfaction, in whole or in part, of said injury, nor has any release of the claim growing out of the same been made.

That they, the said W. W. Crehore, by his father and next friend, John D. Crehore, and John D. Crehore, father of said Wm. W. Crehore, desire to prosecute an action to recover damages for said injury, to wit: An action at law against the defendant in this case, to wit, The Ohio & Mississippi Railway Company.

Petitioners further state that this court has heretofore, by its judgments entered in this case on the 2nd of April, 1884, permitted the said John M. Douglass, receiver, to resign said receivership and to transfer said railway to defendant, The Ohio and Mississippi Railway Company, and has permitted the said defendant, The
29 Ohio & Mississippi Railway Company, to take possession of all the property of said railway, and it has done so, and now has possession of the same and is operating the same.

Further, petitioners state that the defendant, The Ohio & Mississippi Railway Company, has undertaken of record to be answerable for the payments of all the debts and liabilities contracted or in-

curred during the receivership of the said railway property under the orders of this court appointing and continuing said receiver.

Petitioners further represent that by the said judgment it is provided that the defendant, The Ohio & Mississippi Railway Company, shall take hold and operate the railroad property aforesaid in place of said receiver and subject to such orders as this court may from time to time make, requiring it, the said defendant, to pay claims or liabilities incurred during the receivership, or to settle, pay, or discharge any orders or judgments made in favor of any inter-
30 vening creditors herein, and that this case has been retained under the control of this court for the purpose of enforcing the said judgment and the undertakings of the Ohio & Mississippi Railway Company aforesaid.

Petitioners state that they are advised that it is proper for them to apply to this court for permission to sue the defendants, The Ohio & Mississippi Railway Company, in respect of the injuries aforesaid, and to ascertain the amount of said injury and the compensation due from defendant therefor; and they pray the court to permit them now to file their said suit either in this court, if in the judgment of the court it be the proper form, or in some court of law having a jurisdiction to try said action, and they pray for any and all proper orders in such regard; and further they pray that the judgment obtained in said action when brought *and* deemed by this court a debt and liability of the defendant, The Ohio &
31 Mississippi Railway Company, and that said Ohio & Mississippi Railway Company be adjudged and decreed to pay the same to the petitioners.

They pray for all proper orders in the premises.

____ ____,
For Petitioners.

John Mason Brown, being first duly sworn, states that he is the agent and one of the attorneys for the petitioners, Wm. W. Crehore and John D. Crehore; that each of them, the said Wm. W. Crehore and John D. Crehore, are absent from the county of Jefferson and from the State of Kentucky, and they have not nor has either of them any agent in this State known to affiant other than this affiant. He says that the statements of the foregoing petition are true, as he verily believes.

JOHN MASON BROWN.

Subscribed and sworn to before me by John Mason Brown this 30th day of June, 1884.

R. A. BATMAN,
N. P. J. C., of Ky.

A copy.
Attest:

JNO. H. WELLER, *Clerk*,
By J. G. WALKER,
D. C. Louisville Chancery Court.

32 COMMONWEALTH OF KENTUCKY:

Louisville Chancery Court.

ROB'T GARRETT *vs.* O. & M. R'Y CO.

At a court held for the *court* aforesaid on the 5th day of July, 1884, the court being now advised, it is considered that the motion of J. D. Crehore be and is sustained.

It is therefore ordered and adjudged that the said J. D. Crehore have and *are* hereby given right and authority to sue the defendants, The Ohio & Mississippi Railway Company, — respect of any injuries received by the petitioner, W. W. Crehore, a minor, during the receivership of John M. Douglass, former receiver herein, and said action may be brought in any court having jurisdiction to try said cause.

And it is further — that the liability in respect of said alleged injury may be established in such suit by judgment at law obtained therein, and any judgment so obtained may be reported to
33 this court as evidence of such liability for such action on the part of the court enforcing the same as to the court m .y seem right and proper.

A copy.

Attest: JNO. H. WELLER, *Clerk*,
By J. G. WALKER,
D. C. Louisville Chancery Court.

And at a court held as aforesaid on the 6th day of October, 1884, the following order was entered, to wit:

Order.

This day came parties, by counsel, and on motion of defendant ordered by the court that this case be passed one week on the docket.

And at a court held as aforesaid on the 13th day of October, 1884, the following order was entered, to wit:

Order.

This day came parties, by counsel, and on motion of defendant, and by consent, ordered by the court that this case be passed one week on the docket.

And at a court held as aforesaid on the 20th day of October, 1884, the following order was entered, to wit:

34 *Order.*

This day came plaintiffs, by counsel, and on their motion ordered by the court that this case be passed one week on the docket.

And at a court held as aforesaid on the 27th day of October, 1884, the following order was entered, to wit:

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th

Order.

This day came plaintiffs, by counsel, and on motion of plaintiffs ordered by the court that this case be passed one week on the docket.

And at a court held as aforesaid on the 3rd day of November, 1884, the following order was entered, to wit:

Order.

This day came parties, by counsel, and on motion of plaintiffs, and by consent, ordered by the court that this case be passed one week on the docket.

And at a court held as aforesaid on the 10th day of November the following order was entered, to wit:

Order.

Ordered by the court that this case be passed one week on the docket.

35 And at a court held as aforesaid on the 24th day of November, 1884, the following order was entered, to wit:

Order.

This day came parties, by counsel, and the plaintiff, John Mason Brown, suggests to the court that the plaintiff, W. W. Crehore, has now become of age. On his motion, ordered by the court that this action be hereafter prosecuted in the name of W. W. Crehore, instead of W. W. Crehore, by his next friend, John Mason Brown.

The defendant filed a petition for the removal of this case to the circuit court of the United States for the district of Kentucky herein.

The defendant tendered to the court a bond, with Charles H. Gibson as surety, which, being approved by the court, is ordered by the court to be filed and made a part of the record and proceedings herein; which is done.

The defendant moved the court to transfer this case to the circuit court of the United States for the district of Kentucky, and said motion was submitted, and the court, being advised, orders said motion be sustained.

36 It is therefore ordered by the court that this court proceed no further herein.

Which petition for removal, filed as aforesaid, is in words and figures as follows, to wit:

Petition for Removal.

Louisville Law & Equity Court.

W. W. CREHORE, Plaintiff,

vs.

OHIO & MISSISSIPPI RAILWAY CO., Defendant.

Petition for removal to the circuit court of the United States for the district of Kentucky.

The defendant, The Ohio & Mississippi Railway Company, comes and petitions the court to stay further proceedings in this action and to remove it to the circuit court of the United States for the district of Kentucky, because, it says, this is a controversy between citizens of different States; that the plaintiff, W. W. Crehore, is a citizen of and resides in the State of Ohio; that this defendant is a corporation created and existing under the laws of the State
37 of Indiana, where it resides and does business; that it has no corporate existence in the State of Kentucky; that the matter in dispute and controversy in this action exceeds the sum of five hundred dollars, exclusive of costs and interest, and that this action has not at any time — assigned to any day or term for trial, and could not have been tried before this time.

Defendant offers herewith a bond, with good and sufficient —, for its entering into the circuit court of the United States for the district of Kentucky on the first day of its next session a copy of the record in this action and for paying all costs that may be awarded by the said court if it shall hold that this action was wrongfully or improperly removed thereto.

GIBSON & GIBSON,
Att'ys for Def't.

Charles H. Gibson, being duly sworn, deposes and says that he is attorney of the Ohio & Mississippi Railway Company, all of whose officers are now absent from the State of Kentucky, and
38 that the matters stated in the foregoing petition are true, to the knowledge of the deponent, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

CHARLES H. GIBSON.

Subscribed and sworn to before me by Charles H. Gibson this 24th of November, 1884.

WM. AYRES,
Not. Pub., Jefferson Co., Ky.

Which bond, filed as aforesaid, is in words and figures as follows, to wit:

Bond of Def't for Removal.

Know all men by these presents that The Ohio and Mississippi Railway Company, as principal, and Charles H. Gibson, as surety, are firmly held and bound to W. W. Crehore in the sum of two hundred and fifty dollars, lawful — of the United States; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, and personal representatives.

In witness whereof the said company, by its president, here-
39 unto set its corporate name and affixes its corporate seal, and the said surety hereunto sets his hand and seal, this — day of November, A. D. 1884. Now, the condition of the above obligation is such that whereas the above-bounden Ohio & Mississippi Railway Company is about to file in the Louisville law and equity court, in the city of Louisville, Kentucky, a petition for the removal into the circuit court of the United States for the district of Kentucky of a certain suit now pending in said court, wherein the said W. W. Crehore is plaintiff and The Ohio and Mississippi Railway Company is defendant; now, if the said Ohio & Mississippi Railway Company shall enter in the said circuit court on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said court if it shall hold that said suit was wrongfully or improperly removed thereto, then this
40 obligation to be void; otherwise to remain in full force and effect.

[SEAL.] OHIO & MISSISSIPPI RAILWAY COMPANY,
By W. W. PEABODY, *President.*
A. DONALDSON, *Ass't Secr'y.*
CHAS. H. GIBSON.

STATE OF KENTUCKY, *County of Jefferson:*

I, John S. Cain, clerk of the Louisville law and equity court in and for the county and State aforesaid, do hereby certify that the foregoing twenty-five pages contain a full, true, and complete transcript of the record in case No. 25150½, Crehore *vs.* Ohio & Missi-ppi Railway Co., as appears of record in my office.

Witness my hand as said clerk this 18th day of December, 1884.

JOHN S. CAIN, *Clerk.*

Order. Dem'r Filed.

And at a court held for the *court* aforesaid on Tuesday, February 17th, 1885, came the defendant, by Charles H. Gibson, its attorney, and filed its demurrer to the petition herein, and the court, not being advised thereof, takes time.

41 The demurrer above referred to is as follows, to wit:

Demurrer.

Circuit Court of the United States, District of Kentucky.

W. W. CREHORE, Plaintiff,

vs.

OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

The defendant, The Ohio & Mississippi Railway Company, demurs to the plaintiff's petition herein because it says the said petition does not state facts sufficient to support or constitute a cause of action against it.

Wherefore.

C. H. GIBSON,
Att'y for Ohio & Mississippi Railway Co.

Order. Dem'r Overruled & Opinion Filed.

And on another day of said term of said court, to wit, on Tuesday, March 31st, 1885, the court being now fully advised of the defendant's demurrer to the plaintiff's petition herein, it is therefore considered by the court that the said demurrer be, and the same is hereby, overruled.

The court delivered its written opinion herein; which is as follows, to wit:

42 *Opinion on Demurrer.*

W. W. CREHORE *vs.* O. & M. R'Y CO.

The petition alleges that the plaintiff was very seriously injured in January, 1884, in the State of Indiana, while travelling as a passenger on a train which was being run by the employés of John M. Douglass, who was then the receiver of defendant's road, cars, rolling stock, &c., under the appointment of the U. S. circuit courts for the districts of Illinois, Indiana, southern district of Ohio, and of the Louisville chancery court. It states that defendant's roads were being run as a continuous line from Cincinnati to St. Louis and to this city (Louisville) by said Douglass as receiver, appointed by these several courts, and that said injury was caused by the wilful neglect of the said receiver and his employés. The petition further states that in April, 1884, the roads, cars, rolling stock, and other property of the defendant were restored to the defendant upon
43 its motion by the several courts, including the Louisville chancery court, and that the order directing said property to be restored and delivered to defendant was made upon the condition that said defendant should be responsible for and answer for and make good and discharge all liabilities and obligations incurred in respect of and because of said railway property or any part thereof during the receivership of said Jno. M. Douglass, and that the defendant agreed of record to stand good for and satisfy any and all such liabilities growing out of the operations of said railway property or any part thereof by said receiver.

It is also alleged that permission of the Louisville chancery court was obtained to bring this suit before it was brought.

The defendant demurs to the petition because it does not state facts sufficient to support or constitute a cause of action. It
44 insisted that, as the injury complained of was done in Indiana and by the employés of the receiver appointed by the U. S. circuit court for the district of Indiana, suit cannot be instituted for this injury against the Kentucky receiver, even though he is the same person and the consent of the Kentucky court has been obtained.

2. That the defendant cannot be sued directly with or without the consent of the court, but that it is only liable through the receiver.

It may be conceded for the purposes of this opinion that Douglas derived his power and authority in the respective States from his appointment in and by the respective courts, and that his authority did not extend beyond the territory over which the court had jurisdiction. Booth *vs.* Clark, 17 How., 322; Peale *vs.* Phelps, 14 How., 368. It may be that the courts will be compelled to modify this doctrine somewhat as applicable to receivers engaged in operating rail-
45 roads, but assuming that this limitation of the authority applies with equal force to receivers who operate railways it will not prevent them from being sued in another court or State if the suit is with the permission of the court that appointed such receiver.

The fact that a suit is against a receiver does not localize the action either to the court in which he is appointed or to the State in which that court is held if by the general law the action is transitory, provided permission is given to bring such suit by the court that appointed the receiver. Barton *vs.* Barbour, 104 U. S. R., 126, decides that a receiver appointed by a Virginia court could not be sued in the District of Columbia for an injury done in Virginia without the previous consent of the Virginia court, but there is no intimation in the opinion that the action could not have been maintained in the court of the District of Columbia with the permission of the Virginia court. On the contrary, the opinion assumes that
46 such an action could have been maintained with the consent of the court in Virginia. It is not necessary to determine whether, if Douglass were still the receiver, he could be sued in Kentucky for injuries done in Indiana without the consent of the Indiana court, but with that of the Kentucky court. Douglass is no longer the receiver of either court, but the defendant, a corporation doing business in and recognized by both States, has by the express order of both courts assumed and become liable for Douglass' acts, obligations, and liabilities as receiver. This was the condition upon which defendant obtained possession of its property from both courts.

The language of the petition is very broad upon this subject, and it does not appear that defendant's liability is dependant upon the will of the Indiana court for debts or obligations created in Indiana, but that any of the courts may adjudge the defendant liable and, I

think, may give permission to sue in a law court to ascertain the liability.

47 2. It is, however, insisted that this assumption by the defendant is for the protection of the receiver and is a guaranty to him, and is not an assumption of and a direct liability to those having claims against the receiver, or to whom he may be liable in his official character. It seems to me that the order, a copy of which is made part of the petition and which was agreed to by defendant, made a direct assumption by the company of the obligations and liabilities what the receiver Douglass might be under in the previous running of defendant's roads as receiver. This is the reasonable construction of the order under which the property was restored to the defendant, and we see no reason why those having claims against the property restored to defendant should be put to the trouble and expense of a double litigation—one against the receiver and the other against the defendant. All obligations and liabilities assumed by the defendant run against the receiver

48 in his official capacity, and the only means of paying them was the property restored to defendant; hence there would be no reason why the receiver should be sued before the liability of the defendant, who had assumed the obligations of the receiver and held all the property which was represented by him, could be fixed and defendant made pay them. Even in the ordinary case where A promises B to pay his (B'-) debt to C, C may sue A upon his promise to B. Spadone *vs.* Reed, 14 Bush., 457; Jones *vs.* Higgins, 80 Ky. R., 409.

In the case at bar plaintiff's right to sue defendant directly should be implied in the absence of language in the order indicating a different intent, because the property which was delivered to the company was the only means by which the plaintiff could be satisfied if his claim be a valid one. Nat'l B'k *vs.* Grand Lodge, 98 U. S. R., 123.

The demurrer should be overruled, and it is so ordered.

J. W. B.

49 *Order Filing Answer.*

And on another day of said term of said court, to wit, on Tuesday, June 30th, 1885, came the defendant, by Charles H. Gibson, its attorney, and filed its answer herein; which answer is in words and figures as follows, to wit:

Answer of Def't.

Circuit Court of the United States for the District of Kentucky.

W. W. CREHORE, Plaintiff,

vs.

THE OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

The defendant, The Ohio and Mississippi Railway Company, for answer herein, comes and says:

1st. It admits that the plaintiff was, on the 5th day of January, 1884, a passenger upon a certain railway train belonging to and being

a part of the equipment of and operated upon and over the line of defendant's railroad, and that while such passenger he did, on the day aforesaid, at or near to the town of Charlestown, within
50 the State of Indiana, sustain certain personal injuries, but says that the said train was at such time and place under the sole control and management of one John M. Douglass, then and there acting as receiver of said railway, under and by virtue of his appointment as such by the circuit court of the United States for the district of Indiana, in the case of William King *et al. versus* The Ohio and Mississippi Railway Company *et al.*, and not otherwise, but defendant denies that said Douglass was at the time and place aforesaid operating the said train or the said railway as receiver appointed by the Louisville chancery court in the case of Robert Garrett *et al. versus* The Ohio and Mississippi Railway Company *et al.*, and denies that the said Louisville chancery court had any jurisdiction or control over the said railway in the State of Indiana, or the said Douglass as the receiver of the circuit court of the United States for the district of Indiana, or the acts or commissions of the said Douglass as receiver of the said railway property within
51 the jurisdiction of the said circuit court of the United States for the district of Indiana, and says that at the time and place the plaintiff received his injuries the said Douglass was acting as the receiver of and was solely amenable to and under the jurisdiction of the circuit court of the United States for the district of Indiana, and that the said Louisville chancery court had no jurisdiction over his acts and omissions as such receiver in the said State of Indiana and outside of its jurisdiction.

2nd. Further answering, this defendant says that at the time of the alleged grievances its entire road, engines, cars, and all its property, together with the entire control and management of the same, were in the hands and possession and under the control of one John M. Douglass, receiver, duly and legally appointed by the circuit court of the United States for the district of Indiana and by the Louisville chancery court, in their respective jurisdictions,
52 and this defendant admits that the said Douglass, as receiver appointed by the Louisville chancery court, was ordered by said court to and did turn over and deliver to this defendant all of the property in his hands as such receiver within the jurisdiction of the said Louisville chancery court, and that said Douglass, as such receiver, was discharged from his duties, but defendant denies that such order was made or that the said property was restored to this defendant upon the conditions alleged in the petition, that this defendant should be responsible for or answer for or make good for or discharge all the liabilities and obligations incurred in respect of and because of the said railway property or any part thereof, or in operation thereof, or any part thereof, during the receivership of the said John M. Douglass, and denies that in pursuance to an order imposing any such conditions on it that it received its property from said receiver, and denies that it now has possession of said
53 property under any such order, or on the contrary thereof, but says that its said railway, equipment, and property was

restored to it in pursuance of certain orders and proceedings had in the circuit court of the United States for the district of Indiana and in the Louisville chancery court as hereinafter recited, and that it assumed no other liability than that imposed upon it by such several orders and by its bond given in pursuance thereto. It says that on the 17th day of March, 1884, there was made and entered in the circuit court of the United States for the district of Indiana (in the said cause wherein the receiver aforesaid was appointed), before the Honorable Thomas Drummond and Honorable William A. Woods, judges of said court, a certain order in words and figures as follows:

In the Circuit Court of the United States for the District of Indiana.
November Term, 1883.

54 WILLIAM KING *et al.*
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY *et al.* } Original Bill.

ALLEN CAMPBELL, Trustee,
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY *et al.* } Cross-Bill.

MARCH 17TH, 1884.

Before Honorable Thomas Drummond and Honorable William A. Woods, judges.

Now comes the Ohio and Mississippi Railway Company, by Charles A. Beecher, and files its petition offering to make payment of its debts and liabilities and obligations of the receiver; upon filing which and for good cause shown, all parties to the same being represented by their counsel, Mr. Hardy, Mr. Crawford, and Messrs. Harrison, Hines, and Miller, for the complainant, and Mr. Hendricks and — Peckham for the trustee and cross-plaintiff, and no one objecting thereto, it is ordered—

1st. That the receiver be, and he is hereby, directed to deliver to the Union Trust Company of New York City or to an agent in the city of Cincinnati appointed by it for and on account of
55 the Ohio and Mississippi Railway Company or to the president of the last-named company all and singular the four hundred and fifteen bonds, with the coupons thereon, of the Ohio and Mississippi Railway Company secured by the mortgage of its Springfield Division now held by him upon receiving from the Ohio and Mississippi Railway Company or the said Union Trust Company for it the amounts heretofore paid by the receiver or his predecessors for the redemption of said bonds, which said sum shall compose part of the funds of the receiver to be paid as may be hereafter directed by the court.

2. That the possession of the railway and equipment of the defendant company shall be delivered by the receiver to said company whenever and as soon as said company shall have complied with the following terms and conditions:

First. The filing with the clerk of the court or the written
56 consent of the complainants or their counsel, of Allen Campbell, trustee, or his counsel, and of the Farmers' Loan and Trust Company or its counsel to the dismissal of this suit.

Second. When there shall have been delivered to John M. Douglass, receiver, of this court, payable to the said Douglass, for the benefit of whom it may concern, a bond executed by two or more sureties, satisfactory to this court, in the penal sum of five hundred thousand dollars, conditioned for the payment of all the debts and liabilities contracted or incurred during the receivership of said property under the orders of this court and of the circuit courts of the United States in Ohio, Illinois, and Missouri, ancillary hereto, and of the Louisville chancery court; also conditioned for the ex*h*oneration of said receiver and of his predecessor, John King, Jr., from all liability on account of their respective lawful acts as such receivers; and also conditioned for the payment of costs of this cause, including the counsel and trustee fees allowed to counsel for
57 services herein, the costs of this cause and the fees of counsel and of the trustees for services rendered herein to be paid to the receiver upon written demand made by him upon the obligors; and also conditioned for the payment of all claims adjudged or to be adjudged by this court or any one of the courts heretofore named as being in the nature of preferential claims against the said property or any part thereof.

And it is further ordered that when and as soon as said conditions shall have been complied with and said railway and equipment delivered to said company the receiver shall proceed to apply all and singular the money coming into his hands as such receiver to the debts of the receivership, and those adjudged and to be adjudged by this court or any one of the courts heretofore named as payable by him, and shall make report thereof from time to time, to the end that said receivership may be speedily closed and said receiver discharged.

58 And afterwards, on the 1st day of April, 1884, in the aforesaid court and before the aforementioned judges thereof, there was made another certain order in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Indiana.
November Term, 1883.

WILLIAM KING *et al.*
vs.
THE OHIO & MISSISSIPPI RAILWAY COMPANY *et al.* } Original Bill.

ALLEN CAMPBELL *et al.*
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY *et al.* } Cross-Bill.

APRIL 1ST, 1884.

Before the Honorable Thomas Drummond and Honorable William A. Woods, judges.

And now at this day come the complainants, by Hoadly, Johnson & Colston and Henry Crawford, their solicitors; Allen Campbell, trustee, by Baker, Wood, and Hendricks, and Wheeler H. Peckham, his solicitors; The Farmers' Loan and Trust Company,
59 by Turner, Lee, and McClure, its solicitors, and Daniel Terrence, assignee of James G. Ross, by Bristow, Peet, and Apdyke, his solicitors, to move to dismiss their several bills and cross-bills and the intervening petition of the said Daniel Terrence or of his assignee, James G. Ross, pending in this case, and present to the court the written order of dismissal of the original and cross bills herein, which order is directed to be filed by the clerk without further action by the court thereon than as is hereinafter stated; and also come the said Ohio and Mississippi Railway Company, by W. T. McClintock, the counsel, and the said John M. Douglass, receiver herein, by his solicitor, John N. Jewett; and it appearing to the court by the admission of said receiver in open court that the said Ohio and Mississippi Railway Company has paid to John M. Douglass the sum of thirty-five thousand dollars, the amount
60 heretofore paid out of the funds of the receivership herein for the redemption of the four hundred and fifteen bonds, with the coupons thereon, of the said Ohio and Mississippi Railway Company, secured by a mortgage on its Springfield Division, and said bonds and coupons having been thereupon delivered to said company, as provided by the order of this court on the 17th of March instant; and it appearing to the court that the said Ohio and Mississippi Railway Company has delivered to the said receiver a bond payable and conditioned as required by said order of the 17th of March instant, which said bond is by the court approved, it is now ordered that said receiver shall on this day transfer, deliver, and assign to the said Ohio and Mississippi Railway Company, to take effect on the 1st of April, 1884, the possession of the railway, equipment, material, and all monies, choses in action, and other property of every sort and description which may then be in his
61 possession or which may belong to him as such receiver, and the same when done shall be a discharge of the said John M. Douglass, receiver herein, from all acts and duties as operating receiver herein, and the said Ohio and Mississippi Railway Com-

pany shall take and hold the said property in place and stead of said receiver under the authority of the court and subject to such orders as it may hereafter make, requiring it to pay any and all claims or liabilities incurred during the receivership, to settle, pay, or discharge any order or decree made in favor of any intervening claimants herein, and for the purpose of settling, adjusting, and satisfying the claims of said receivership, as aforesaid, the court retains the said cause for such order as may be made herein in furtherance thereof, and all reports heretofore made to the court by said receiver to which exceptions have not been filed are hereby confirmed, and all settlements of claims made by the receiver six months prior to the date of this decree to which no exceptions have been made or filed in court are also confirmed.

62 And it is further ordered that all claims against said receivership shall be presented to the court for adjudication within sixty days from this date and not thereafter.

And in the aforesaid circuit court of the United States and before the aforesaid judges thereof and in the causes aforementioned there was also executed and approved by the judges of said court and entered of record in said court the following bond, to wit:

"The Ohio and Mississippi Railway Company, as principal, and W. F. Burns, James Sloan, Jr., T. Harrison Garret, C. A. Beecher, and Frank W. Tracy, as sureties, acknowledge themselves to be indebted, with John M. Douglass, receiver, for the benefit of whom it may concern, in the penal sum of five hundred thousand ($500,000) dollars, lawful money of the United States; for the payment of which, well and truly to be made, they bind themselves, their heirs and executors, jointly and severally, by these presents.

"Signed and sealed this eighteenth day of March, 1884.

63 The consideration of the above obligation is such that whereas the circuit court of the United States for the district of Indiana, in a certain suit in equity wherein William King and others were complainants and the above-bo-nden railway company and others were defendants, did, on the 17th day of March, 1884, duly enter of record an order directing John M. Douglas, the receiver appointed in said cause, to turn over the possession of the line of railway and equipment now in his custody unto the said railway company on the conditions named in the said order; now, if the above-bo-nden Ohio and Mississippi Railway Company and the sureties herein shall pay all the debts and liabilities contracted or incurred during the receivership of said property, under the orders of the circuit court of the United States for the district of Indiana and of the circuit court of the United States in Ohio, Illinois, and Missouri, and of the Louisville chancery court in the cases wherein said receiver was appointed,

64 and shall exonerate said receiver and predecessor, John King, Jr., from all liability on account of their respective lawful acts as such receivers, and shall pay all the costs in the said causes, including the counsel and trustee fees allowed to counsel for services therein, and shall pay the costs of the cause pending in the circuit court of the United States for the district of Indiana and in the other

courts named, and the fees of counsel and of the trustees for services rendered therein upon demand made by the receiver in writing upon the obligors herein, and shall also pay all claims adjudged or to be hereafter adjudged by the circuit court of the United States for the district of Indiana or any of the courts heretofore named as being in the nature of preferential claims against the said property or any part of it, this obligation to be void; otherwise to remain in full force and virtue.

THE OHIO AND MISSI-PPI RAILWAY COMPANY,
By W. T. McCLINTOCK, *President.*

65 W. F. BURNS.
JAMES SLOAN, JR.
C. A. BEECHER.
FRANK W. TRACY.

Witness as to the signature of Messrs. Burns, Sloan, and Garret,
C. NITZ.

Witness as to C. A. Beecher,
W. T. BARNARD.

[Seal of O. & M. R'y Co.]

Attest: A. DONALDSON,
Assistant Secretary O. & M. R'y Co.

Witness as to F. W. Tracy,
S. H. TREAT.

Approved:
THOMAS DRUMMOND.

And defendant further says that afterwards, on the second day of April, 1884, in the Louisville chancery court, in the case of Robert Garret & Sons *vs.* The Ohio and Mississippi Railway Company *et al.*, the following orders were entered in said cause:

COMMONWEALTH OF KENTUCKY:

Louisville Chancery Court.

66 ROBERT GARRET
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY.

At a court held for the *court* aforesaid on the 2d day of April, 1884, now comes the Ohio and Mississippi Railway Company and shows to the court by exhibits filed that heretofore, on the 17th day of March, 1884, the circuit court of the United States for the district of Indiana made and entered a decree in the words and figures following—that is to say:

"Now comes the Ohio and Missi-ppi Railway Company, by Charles

A. Beecher, and files its petition offering to make payment of its debts and liabilities, and to secure and provide for the liabilities and obligations of the receiver; upon filing which and for good cause shown, all the parties to the cause being represented by their counsel, Mr. Hoadly, Mr. Crawford, Messrs. Harrison, Hines & Miller for the complainant, and Mr. Hendricks and Mr. Peckham for
67 the trustee and cross-complainant, and no one objecting thereto, it is now ordered—

"First. That the receiver be, and he is hereby, directed to deliver to the Union Trust Company of New York City, or to an agent in the city of Cincinnati appointed by it, and on account of the Ohio and Mississippi Railway Company, or to the president of the last-named company, all and singular the four hundred and fifteen bonds, with the coupons thereon, of the Ohio and Mississippi Railway Company, or the said Union Trust Company for it, the amounts heretofore paid by the said receiver or his predecessor for the redemption of said bonds, which said sum shall compose part of the funds of the receiver to be paid as may hereafter be directed by this court.

"Second. That the possession of the railway and equipment of the defendant company shall be delivered by the receiver to said company whenever and as soon as said company shall have com-
68 plied with the following terms and conditions:

"1st. The filing with the clerk of the court of the written consent of the complainants or their counsel, of Allen Campbell, trustee, or his counsel, and of the Farmers' Loan and Trust Company or its counsel to the dismissal of this suit.

"2. When there shall have been delivered to John M. Douglass, receiver of this court, payable to the said Douglass for the benefit of whom it may concern, a bond executed by two or more sureties, satisfactory to this court, in the penal sum of five hundred thousand dollars, conditioned for the payment of all the debts and liabilities contracted or incurred during the receivership of said property under the orders of the court and of the circuit court of the United States in Ohio, Illinois, and Missouri, ancillary hereto, and of the Louisville chancery court, and also conditioned for the exoneration of said receiver and of his predecessor, John
69 King, Jr., from all liability on account of their respective lawful acts as such receiver, and also conditioned for the payment of costs of this cause, including the counsel and trustee fees allowed to counsel for services herein, the cost of this cause, and the fees of counsel, and of the trustees for services rendered herein, to be paid to the receiver upon written demand made by him upon the obligors; and also conditioned for the payment of all claims adjudged or to be hereafter adjudged by the court or any one of the courts heretofore named as being in the nature of preferential claims against the said property or any part of it.

"And it is further ordered that when and as soon as said conditions shall have been complied with and said railway and equipment delivered to said company the receiver shall proceed to apply all and singular the monies coming into his hands as such receiver

to the debts of the receivership and those adjudged and to be
70 adjudged by this court or any one of the courts heretofore named as payable by him, and shall make report thereon from time to time, to the end that said receivership may be speedily closed and said receiver discharged."

Therefore it is ordered, by consent of parties, that upon the performance of the conditions of said decree the possession of the railway and equipment described in said decree, so far as the same are situated in the State of Kentucky, shall be delivered by the receiver to the Ohio and Mississippi Railway Company with the same effect as if the aforesaid order had been entered originally in this cause.

Came John M. Douglass, receiver, by Charles H. Gibson, his counsel, and admitted in open court that the conditions of the decree entered by the circuit court of the United States for the district of Indiana, on the 17th day of March, 1884, in the action of William King *et al. vs.* The Ohio and Mississippi Railway Company (a copy
71 thereof has been filed herein), have been fully complied with by the petitioners in said cause and the Ohio and Mississippi Railway Company.

Then came the Ohio and Mississippi Railway Company, by Charles A. Beecher, its counsel, and in open court admitted that John M. Douglass, receiver, had delivered to it the possession of its railway and equipment and all other property belonging to it in the State of Kentucky and within the jurisdiction of this court, as directed by the order entered herein this day.

Thereupon, on motion of said John M. Douglass, receiver, by his counsel, it is ordered that he be discharged from the performance of all acts and duties as operating receiver herein, and that the defendant, The Ohio and Mississippi Railway Company, shall take hold and operate the property aforesaid in place of said receiver and subject to such orders as the court may hereafter make, requiring it to pay claims or liabilities incurred during the receivership or
72 to settle, pay, or discharge any orders or judgment made in favor of any intervening claimants herein, and for the purpose of settling and satisfying the claims of said receivership as aforesaid the court retains this cause for such other orders as may appear to the court to be necessary. It is, on motion of said receiver, further ordered that all claims against said receiver arising or that have arisen within jurisdiction of this court shall be presented for adjudication or other proper action within sixty days from this date.

Attest: JOHN H. WELLER, *Clerk*,
By J. G. WALKER,
D. C. Louisville Chancery Court.

Defendants say that it was in pursuance to the proceedings had as aforesaid in the courts aforesaid and in pursuance to the execution by defendant of the bond aforesaid that its said railway, equipment, and property within the jurisdiction of the circuit court
73 of the United States for the district of Indiana was, in pursuance to the orders of the said court, turned over by its said receiver to this defendant, and that its said property in the jurisdic-

tion of the said Louisville chancery court was, in pursuance to its orders, turned over by its said receiver to this defendant.

And defendant says that the claim and demand of the plaintiff herein asserted was a claim against the said receiver, John M. Douglass, acting as such under and by virtue of his appointment in the circuit court of the United States in and for the district of Indiana, and that the same had accrued at the time said Douglass, as such receiver, turned over the defendant's property to it in pursuance to the proceedings had as aforesaid, and that the said claim has never been presented to the said court for adjudication or other action, and that this defendant has never been ordered or directed by said court to pay or satisfy the demand of the plaintiff herein.

74 Third. Further answering, this defendant says that it has no knowledge or information sufficient to form a belief whether the plaintiff was injured because of and through the wilfull neglect of the said receiver and his assistants, agents, and servants then in charge of said train upon and over said railway, or whether the collision referred to and described in the petition and the injuries resulting therefrom were occasioned or occurred through and because of the wilfull neglect of the persons in charge of said train or by the wilfull neglect of the said John M. Douglass or his assistants, agents, or employees in charge of said train and of the said railway and equipment. It has no knowledge or information sufficient to form a belief whether the train which ran into the car on which plaintiff was travelling was propelled at full speed or at the rate of thirty-five or forty miles an hour without being signalled or cautioned or

75 warned in due or usual or proper manner or at the due or usual or proper time, or whether the same was permitted by the said receiver, his assistants, agents, and employees, to run into and crush and telescope the said car. It has no knowledge or information sufficient to form a belief whether the plaintiff's injuries occurred because of the wilfull neglect of the said receiver, his assistants, agents, and employees in charge of said train, in not placing the train conveying the plaintiff in a safe position by running it on a switch or side track or by their wilfull neglect to properly or in due time signal and warn the coming train and cause it to stop, or whether the circumstances were such as to make it plainly and manifestly necessary for the safety of said train to so signal and stop said train.

CHAS. H. GIBSON,
Att'y for Defendant.

STATE OF OHIO, }
Hamilton County, } *ss:*

76 Personally appeared before me, the undersigned, a notary public in and for said county, W. W. Peabody, who, being first duly sworn, says that he is the president of the within-named defendant, The Ohio and Mississippi Railway Company, and that the various allegations in the foregoing answer made are true, as he verily believes.

W. W. PEABODY.

Sworn to before me and subscribed in my presence this 20th day of May, 1885.

[SEAL.] WILLIS H. WIGGINS,
Notary Public, Hamilton County, Ohio.

Order Filing Reply.

And on another day of said term of said court, to wit, on Tuesday, February 14th, 1885, came plaintiff, by John Mason Brown, his attorney, and filed his reply herein.

The reply above referred to is as follows:

Plaintiff's Reply.

In the Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

77 W. W. CREHORE, Plaintiff,
vs.
OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

The plaintiff, for reply to the 1st paragraph of defendant's answer herein, says: He denies that the train in the plaintiff's petition and in the answer of the defendant referred to was, at the time and place of the injuries in plaintiff's petition mentioned, under the sole control and management of John M. Douglass, as then and there acting as receiver under and by virtue of his appointment in the circuit court of the United States in and for the district of Indiana in the case of William King & Others against The Ohio & Mississippi Railway Company & Others, and not otherwise. Plaintiff repeats and charges that said John M. Douglass held his appointment as receiver by virtue of the order of the Louisville chancery court, as in plaintiff's petition is alleged, and that such appointment was concurrent with the other appointments as receiver bestowed upon said Douglass, and he denies that said
78 Douglass, as to any of the matters of the railway line and its equipments, acted solely under an appointment by the circuit court of the United States for the district of Indiana. He repeats and charges that the Louisville chancery court did have jurisdiction over the said railway property and over the said Douglass, as receiver, and had a right to control said Douglass, and that said Douglass was an officer of the Louisville chancery court; and plaintiff denies that at the time of the injuries in the petition mentioned said Douglass was acting only as receiver of the circuit court of the United States for the district of Indiana or that the said Douglass was solely amenable to or solely under the jurisdiction of the circuit court of the United States for the district of Indiana, and he says that the Louisville chancery court did have jurisdiction of the acts and omissions of said Douglass, as receiver, as well in the State of Indiana as in the State of Kentucky or in any State wherein any part of the railway property operated as a continuous line
79 and as an entirety was situated.

2. And for reply to the second paragraph of defendant's

answer plaintiff says he denies that John M. Douglass, as receiver, appointed by the circuit court of the United States for the district of Indiana and also appointed such receiver by the Louisville chancery court of Kentucky, was solely responsible to the circuit court of the United States for the district of Indiana as to or on account of any wrongful acts of omission or commission by him committed or any torts by him committed through his negligence; but plaintiff says that the jurisdiction of the said courts was and is concurrent as to the injuries in the plaintiff's petition mentioned.

Plaintiff denies that the defendant assumed no other liability or that defendant is not otherwise liable than as in the orders of the United States circuit court for the district of Indiana and in the orders of the Louisville chancery court of Kentucky, and as in his bond given in pursuance thereof is set forth; but he says
80 that the defendant is liable wherever found for the negligence and wrongs committed by John M. Douglass, formerly receiver of the railway property of defendant, during the time of his receivership.

And, further, plaintiff denies that the claim and demand of the plaintiff in this action asserted was only and solely a claim against the receiver, John M. Douglass, acting as such under and by virtue of his appointment by the circuit court of the United States in and for the district of Indiana; but he again says it was a claim against such Douglass, as receiver, under any and all the appointments as receiver by him held and exercised.

Plaintiff admits that his right of action had accrued at the time said Douglass, as receiver, turned over defendant's property to defendant; but plaintiff at that time was suffering from the injuries in the petition described, and was unable to attend to or assert his claim, and the said turning over of the property by said
81 Douglass to defendant was without any notice to the plaintiff or to plaintiff's counsel or to and friend of plaintiff.

BROWN, HUMPHREY & DAVIE, *p. q.*

John Mason Brown says he is the agent and attorney for the plaintiff; that the plaintiff is absent from the State and district of Kentucky, and that the statements of the foregoing reply are true, as he verily believes.

JOHN MASON BROWN.

Subscribed and sworn to by John Mason Brown before me this 9th July, 1885.

R. A. BATMAN,
N. P. J. C., Kentucky.

Order.

And at a term of said court held for its February term, 1886, to wit, on Saturday, March 13th, 1886, came the defendant, by Charles H. Gibson, its attorney, and tendered its amended and supplemental answer herein, and moved the court to file the same, and the court, not being advised thereof, takes time.

And on another day of said term of said court, to wit, on
82 Monday, March 15th, 1886, came the plaintiff, by John Mason Brown and J. E. Ingersole, his attorneys; came also the defendant, by Charles G. Gibson and Percy Werner, his attorneys.

Order. Filing Am'd & Supplemental Ans'r; & Jury, &c.

The defendant, by its attorneys, filed its amended and supplemental answer, and by consent the allegations of said answer are controverted of record.

Thereupon came a jury, to wit, J. H. Bagley, H. C. Morgan, Charles Werner, W. N. Martin, H. P. Wise, G. W. Hoy, L. S. Marcum, L. G. Peak, M. M. Green, Charles E. Lightfoot, Allen Murphy, and Fred. Walter, who were elected, tried, and sworn to well and truly try the issue joined. There not being time to conclude the hearing of evidence to-day, time is given until to-morrow. The jury is adjourned until to-morrow morning at 10 o'clock.

The amended & supplemental answer above referred to is as follows, to wit:

Amended & Supplemental Answer.

United States Circuit Court for the District of Kentucky.

WM. W. CREHORE, Plaintiff,
versus
OHIO & MISSISSIPPI RAILWAY COMPANY, Defendant.

Amended answer.

The defendant, The Ohio and Mississippi Railway Company, for amended and supplemental answer herein, say- that since the
83 filing of the answer of the defendant and filing of the reply of the plaintiff herein, viz., in the month of October, 1885, the plaintiff and the defendant entered into negotiations for a compromise of the claims of the plaintiff asserted herein against defendant, and through the said negotiations this defendant offered to pay to the plaintiff, in full settlement and compromise of the claims and demands asserted in this action, the sum of two thousand dollars ($2,000) and the costs of this action, and the said offer of defendant was by the plaintiff on the 17th of October, 1885, accepted in writing, and all matters in dispute herein and all claims and demands herein asserted by plaintiff against defendant were agreed to be settled and compromised by the payment by defendant to plaintiff of the said sum of $2,000.00 and costs of this action. The said agreement to accept said $2,000.00 and costs was in writing, signed by the plaintiff and delivered to defendant, and the agreement to accept said $2,000.00 and costs was in the words and figures as follows:

84 I hereby agree to accept from the O. & M. Railway Company, in full of all demands of whatsoever nature which I

may have against the said company or the property thereof or J. M. Douglass, former receiver thereof, for or on account of any matter whatsoever, and more particularly from personal injuries received whilst traveling as passenger upon said railway on or about the 5th day of January, 1885, near Charlestown, Indiana, and in settlement of the cause of action upon which suit has been brought by myself against said railway company in the law and equity court of Louisville, Kentucky, the sum of two thousand dollars.

WM. W. CREHORE.

Defendant says that afterwards, on the 11th day of November, 1885, it tendered to and offered to pay to plaintiff the sum of $2,000.00 in compliance with the said compromise agreement aforesaid, and the plaintiff refused to accept the same. Defendant, in pursuance to and on the faith of the agreement aforesaid, has paid a large portion of the plaintiff's costs incurred in this
85 action, and is now and has been at all times since October 17th, 1885, ready, willing, and able to comply fully with the said agreement of compromise, and now again comes and tenders to plaintiff the sum of $2,000.00 in settlement of the demands asserted herein against it by plaintiff, and offers to pay the balance of the plaintiff's costs herein.

Wherefore, &c.

C. A. BEECHER,
PERCY WERNER,
CHAS. H. GIBSON,
Atto's for Def't.

Order.

And on another day of said term of said court, to wit, on Tuesday, March 16th, 1886, came again the parties, by their attorneys; came also the jury empannelled and sworn herein.

Thereupon the defendant, by its attorneys, moved the court to exclude from the jury the evidence of the plaintiff, and not permit him to testify; to which the plaintiff, by counsel, objected, and the court, being advised, overruled said objections and sustained the motion of said defendant; to which the plaintiff excepts.

86 Thereupon the court delivered its instructions to the jury, and the jury returned the following verdict, to wit:

"In pursuance to the instructions of the court, we, the jury, find for the defendant.

"M. M. GREEN, *Foreman.*"

It is therefore considered by the court that the plaintiff, W. W. Crehore, take nothing by his petition, and that the defendant be discharged of the premises and go hence without day and recover of the plaintiff its costs herein expended.

Came again the plaintiff, by his attorney, and filed his bill of exceptions herein, which is signed and sealed by the court and ordered to be filed.

The bill of exceptions above referred to is as follows, to wit:

Bill of Exceptions.

Circuit Court of the United States, 6th Circuit, District of Kentucky.

W. W. CREHORE, Plaintiff,
vs.
OHIO & MISS. R. W. Co., Defendant.

Be it remembered that this cause coming on for trial before the court and a jury sworn, the plaintiff introduced as a witness
87 the plaintiff in his own behalf, who was duly sworn as a witness in the presence of the court and the jury, but before the evidence of said witness was heard, or allowed to be heard, the court, on motion of the defendant, which motion was at the time objected to by the plaintiff, refused to permit said witness to testify and excluded from the jury all evidence in support of the plaintiff's petition and claim herein, on the ground that this court has no jurisdiction of this action; and on the hearing, argument, and consideration of said motion there were read and considered by the court the exhibits referred to in and filed with the plaintiff's petition, viz., 1st, the petition to the Louisville chancery court for permission to sue; 2nd, the order of said court granting leave to sue; 3rd, the order and judgment of said court entered April 2d, 1884, in the suit of Garret *vs.* O. & M. R'y Co.; and also all of the orders, judgments, decrees, and bond referred to and set forth and copied into the answer of the defendant; to which action of the court in overruling plaintiff's said objection, and in refusing to permit plaintiff to
88 testify, and in excluding from the jury all evidence and testimony in support of plaintiff's petition and claim herein, and in holding that this court has no jurisdiction of this action, the plaintiff at the time excepted and still excepts; and thereupon the plaintiff offered to produce to the jury evidence in support of the plaintiff's petition herein, to the production of which the defendant, by counsel, at the time objected, and the court, being advised, sustained said objection and refused to permit the plaintiff to introduce any evidence, and excluded the evidence and all evidence offered by the plaintiff on the ground and for the reason that this court has no jurisdiction to try and determine this action; to which ruling of the court in sustaining defendant's said objection and in refusing to permit plaintiff to introduce proof or evidence, and in holding that this court has no jurisdiction to try this cause, the plaintiff at the time excepted and still excepts.

And thereupon the defendant moved the court for a peremptory instruction to the jury that they find for the defendant; to
89 which motion the plaintiff at the time objected, but the court, being advised, overruled plaintiff's said objection and sustained the said motion of defendant, and peremptorily instructed the jury to find for the defendant, because the court has no jurisdiction to try this action; to which action of the court in overruling plaintiff's said objection and in sustaining defendant's said motion and in giving the said peremptory instruction the plaintiff at the

time excepted and still excepts; and thereupon the jury, under and in obedience to said instruction so given by the court, returned into court their verdict (which verdict has heretofore herein been copied. See page 86 of this record).

And thereupon the court rendered its judgment on said verdict (which judgment has been heretofore copied. See page 86 of this record).

And thereupon the plaintiff presented to the court this his bill of exceptions herein and prayed that the same be signed and sealed as such by the court and made a part of the record herein, which is now accordingly done this 16th day of March, 1886.

JNO. W. BARR, *Judge.*

90 And afterwards, on the 3rd day of April, 1886, came the plaintiff, by his attorneys, and tendered his appeal bond herein, which is approved and filed, and which is as follows:

Appeal Bond.

Circuit Court of the United States, District of Kentucky.

W. W. CREHORE
vs.
THE OHIO AND MISSISSIPPI RAILWAY COMPANY.

Know all men by these presents that we, W. W. Crehore, principal, and John Mason Bowen, surety, are held and firmly bound unto the Ohio and Mississippi Railway Company in the sum of five hundred dollars, to be paid to the said Ohio and Mississippi Railway Company; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this third day of April, A. D. 1886.

Whereas the above-named W. W. Crehore hath prosecuted
91 a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of the foregoing obligation is such that if the above-named W. W. Crehore shall prosecute his said writ of error and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN MASON BROWN. [L. S.]

Sealed and delivered in presence of—
R. A. BATMAN.
W. N. CALDWELL.

Approved:
JNO. W. BARR, *Judge, &c.*

DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the district court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 90 pages, this included, contain a full, true, and
92 complete transcript of the record and proceedings had in the court in the case mentioned in the caption thereof.

Witness my hand and the seal of said court this 10th day of May, A. D. 1886.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL, *Clerk.*

Endorsed on cover: Kentucky C. C. U. S. No. 272. W. W. Crehore, plaintiff in error, *vs.* The Ohio and Mississippi Railway Company. Filed May 24, 1886.

Supreme Court of the United States.

OCTOBER TERM, 1888.

W. W. CREHORE, - - - *Plaintiff in Error,*

VERSUS **No. 272.**

THE OHIO & MISSISSIPPI RAILWAY COMPANY, - - - - - *Defendant in Error.*

Brief for Plaintiff in Error.

In Error to the Circuit Court of the United States for the District of Kentucky.

STATEMENT OF THE CASE.

The point involved in this case is the liability of the defendant railroad company for injuries received by the plaintiff, through willful neglect on the part of the Receiver then in charge of the road; the defendant corporation having taken back its road, under the permission of the Chancellor and subject to all debts and liabilities incurred during the receivership.

There is no dispute whatever as to the facts.

During the Christmas vacation of 1883-84, a party of students of Yale College, organized as the University Glee Club, made a tour of some of the principal cities of the country. This was with the permission and approbation of their parents and instructors. Having appeared at St. Louis, Missouri, they took passage over the defendant's railroad (the Ohio & Mississippi) to Louisville, where they were to give one of their entertainments on the evening of January 5,

1884. The plaintiff, W. W. Crehore, in whose behalf this action is prosecuted, was one of the party. The Ohio & Mississippi Railroad at that time was in the possession and control of a Receiver, who was operating it (as the petition in the case charges, and as is not denied, and is the fact) as a continuous line and as an entirety.

In the financial difficulties of the Ohio & Mississippi Railroad sundry orders appointing a receiver had been made in different States as far back as 1876. The road had its eastern terminus at Cincinnati, Ohio; thence traversed the States of Indiana and Illinois to its western terminus at St. Louis, Missouri; and from a point in Indiana, about midway betweeen the eastern and western temini, a branch turning southwardly entered Louisville, Kentucky. The corporation, therefore, was possessed of property, and was operated as an entire railroad, in the States of Ohio, Indiana, Illinois, Missouri, and Kentucky. When its financial difficulties came upon it, the courts in each of these several States appointed a receiver to take charge of the property, so far as it might be within their respective jurisdictions. There was a concert of action, it would appear (probably suggested by the convenience of business), and Mr. John M. Douglass was ultimately appointed, by each of the courts, receiver.

It concerns the present case to note particularly that the Ohio & Mississippi Railroad had large and valuable properties in Louisville, Kentucky, which was one of its chief terminal points, and that Douglass was the receiver appointed by the Louisville Chancery Court. A proceeding in chancery (in which the Receiver was appointed, his accounts from time to time reported, and necessary orders made), was commenced and continued upon the docket of that court; as appears from the exhibit in the printed record, pages 8, 11, 13, 25.

The Yale students took their passage from St. Louis, Missouri, for Louisville, Kentucky, and paid their fare to the latter point. The tickets evidencing their right to so travel, and which were so bought, were issued by the receiver, and

entitled the holders to a continuous first-class passage over the entire line of the Ohio & Mississippi Railroad into the city of Louisville. About seven o'clock on the evening of the 5th of January, the train upon which these students were passengers, having arrived at Charlestown, Indiana, a small place about twelve miles distant from Louisville, was overtaken by another train, also belonging to defendant, the Ohio & Mississippi Railroad, and operated by the receiver and his agents. The pursuing train, which came from Cincinnati and was destined for Louisville, ran into the train from St. Louis and utterly demolished the car in which the students were passengers. Much injury was done to a number of them, and among those hurt was the infant plaintiff, Wm. W. Crehore; who sustained injuries of a most aggravated and painful character. It is not at all denied by the defendant that these injuries resulted from carelessness and neglect of the grossest and most culpable character; nor is there any dispute as to the extent and permanence of the injuries received. The result to young Crehore was not only great bodily suffering and permanent injury, but what, to an ambitious young man working his way through the University, was in some respects almost as serious. He lost his place in his class, and was postponed at least a year in his college course. His scholarship was injured and his education retarded, and it is admitted that he lost his scholarship rank in college thereby.

These injuries, as has been observed, were incurred while Mr. Douglass was receiver of the road. They were incurred in the State of Indiana, and, as the pleadings admit, upon and during the management of railroad property which was treated as an entirety and operated as a continuous line.

The Louisville Chancery Court had appointed Douglass receiver of the Ohio & Mississippi Railroad property. It was therefore conceived to be necessary and proper under the rulings of this tribunal, first to obtain the permission of the Louisville Chancery Court to bring suit in respect of the liability.

Before suit could be brought the railroad company had procured from the Louisville Chancery Court (as indeed it had from the other courts in which a receiver had been appointed), an order under which the receiver was relieved from duty and the corporation allowed to resume possession of its property. This order was entered at Louisville in the chancery court on the 2d day of April, 1884, and a copy of it appears in the printed record, on pages 8, 9, and 10.

The Louisville Chancery Court being applied to on the 2d day of April, 1884, to discontinue the receivership and restore the railway property within its control to the Ohio & Mississippi Railroad Company, made an order by which this request was granted upon terms and conditions. These terms had already been embodied in an order made by the Circuit Court of the United States for the Southern District of Indiana, and exactly similar requirements were insisted upon by the Kentucky court. The result was that the order of court stipulated that there should be executed on the part of the railway company a bond with good security, in the sum of $500,000, "*conditioned for the payment of all debts and liabilities contracted or incurred during the receivership of said property.*" (See printed record, page 9.) The required bond was executed in the Louisville Chancery Court (printed record, page 10), and thereupon the railway company resumed possession of its property.

It was conceived to be necessary for the assertion of Crehore's claim for damages that the Chancellor, who had reserved this power as against the railway property, should be appealed to for permission to bring suit at law. Such petition was filed by Crehore and his father and next friend, and will be found in the printed record, page 11. In pursuance of this request the Louisville Chancery Court gave permission to bring the suit, which is now before this court on writ of error. After suit filed (see printed record, page 3 and following) the cause was removed by the railway corporation into the Circuit Court of the United States for the District of

Kentucky. A demurrer to the sufficiency of the petition was filed by the defendant (printed record, page 16), and overruled by the court in an opinion sustaining sufficiency of the proceedings asserting the claim. (Printed record, pages 17, 18, and 19.) The defendant having answered, and afterward having tendered an amended answer, the affirmative allegations of which were by stipulation treated as controverted (see printed record, page 31), the parties proceeded to a trial before a jury.

The trial court, at this point, was asked by the defendant to exclude from the jury all evidence tending to support the averments of the petition. This was of course, in another form, a re-argument of the matters already passed upon by the demurrer; but, the motion being sustained, the plaintiff was not allowed to introduce evidence which he offered, nor to present any evidence to the jury; the opinion of the court being that there was no jurisdiction of the action. A peremptory instruction was given, and the jury, obeying it, found a verdict for the defendant, upon which judgment dismissing the petition was entered. Proper bills of exception having been taken, the matter is now brought up on writ of error.

The question involved is, whether, for the personal damages sustained in Indiana, the plaintiff could maintain a suit in Kentucky; the circumstances of separate appointments of receiver, the operation of the property as an entirety, and the terms of the order restoring control to the corporation being as above recited.

Assignment of Errors and Authorities.

It is contended for the plaintiff in error that the action was properly brought, and that the judgment dismissing it was erroneous.

1. The action is at common law for personal injuries. Such an action is transitory, and "liability may be enforced

and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties." (Dennick v. Railroad Co., 103 U. S. 18.)

2. The Kentucky court of common law jurisdiction where the action was commenced had jurisdiction:

1. Because the proper permission to sue at law in respect of the alleged injuries incurred during the receivership had been formally given by the Chancellor. (See printed record, p. 13.)

In this the law as settled by this court was observed. (See Barton v. Barbour, 104, U. S., p. 126.)

2. The Chancellor, by his order entered in the record of the Receivership case, expressly directed that any liability established in the suit at law might be reported to him in the Receivership case for proper action as to its enforcement. (See printed record, p. 13.)

3. The Circuit Court of the U. S., to which the cause was properly removed, had all the jurisdiction of the Kentucky court of law to determine the liability. The right of the Federal court to try is the same in such a case as that of the local State court. (Dennick v. Railroad, 103 U. S. 18.)

4. The Louisville Chancery Court, having appointed a receiver, and having taken under its control property of the railroad company, had full power to prescribe the terms upon which it would discharge the receiver and restore possession to the corporation. (Duncan v. Davis, 19th Fed. Rep. 478; 17th Fed Rep. 758; Farmers Land and Trust Co. v. Central R. R. of Iowa, 7th Fed. Rep. 540.)

5. And, in an order restoring possession, it is competent to stipulate that all liabilities incurred during the receivership shall be paid. (19th Fed. Rep. 478; 17th Fed. Rep. 758; 7th Fed. Rep. 540.)

6. The corporation thus receiving the property is in the attitude of a purchaser, and can not question that reservation in the decree which stipulates for payment of all liabilities incurred during the receivership. (17th Fed. Rep. 758;

Sloan v. Cent. Iowa R. R., 62 Iowa, 728; High on Receivers, p. 355; Schmid v. N. Y. L. E. & W. R. R., 32 Hun. (N. Y.) 385.)

7. The railroad property was operated as an entirety by the receiver, and passengers were transported over it as a continuous line, and for through fare prepaid to the receiver. Either of the courts from whom the appointment of receiver was made, could therefore enforce a safe management of the property, or punish misconduct in the receiver as to the general and continuous transportation.

And either of such equity courts could sanction an inquiry at law into negligence resulting in personal injury.

8. The Louisville Chancery Court had valuable property of the corporation within its control, necessary to the operation of the general corporate property and the conduct of a through traffic. It had right to put the corporation on terms of just accounting to those who had claims founded on the negligent use of corporate property. (High on Receivers, Sec. 306, and cases cited.)

9. The fact that the injury was received in Indiana was no impediment to jurisdiction in Kentucky; although there was an order appointing receiver, made in each State and by independent courts; the same person being by each court appointed receiver.

This results from the transitory nature of the action, and the use of the property as an entirety or continuous line, on a system of single payments of through fares.

So, in a recent case, the U. S Circuit Court for Louisiana imposed damages for injuries received in Texas, under the management of a receiver holding duplicate appointments. (See Pope's case, 30th Federal Reporter, 170.)

Argument.

The authorities above referred to seem to maintain the several propositions necessary to a reversal of this case.

That the action for personal injuries is transitory seems

not open to doubt. This court has announced the doctrine in a case founded upon a claim for personal injuries resulting in death:

"Whether, by either the common law or the statute law of a State, a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties.

"The action in the present case is in the nature of trespass to the person, always held transitory, and the venue immaterial." (Dennick v. Railroad Co., 103 U. S. 18.)

The proposition runs back to the familiar leading case of Mostyn v. Fabrigas.

It must be quite plain, therefore, that no element of doubt exists as to the jurisdiction, unless the duplication of orders in the different States, whereby the same person was in each instance made receiver, can be made an obstacle.

It is entirely agreed by both sides that the Ohio & Mississippi Railway Company passed by proper equitable proceedings into the hands of a receiver.

The U. S. Circuit Court for Indiana made the appointment in a chancery proceeding there regularly instituted.

The courts in Ohio, Illinois, and Mississippi did the same in equitable actions pending there.

So, the Louisville Chancery Court, having the proper parties before it, and a large property of the corporation within its local jurisdiction, made precisely the same order.

The same person—John M. Douglass—was named receiver, as last incumbent of that office, in each of the several orders of appointment.

The equipment and property of the corporation, though scattered in five different States, was, from its very nature, available only when used and operated as an entirety.

A locomotive at Louisville would be of little productive value unless with it were used the passenger and freight cars at St. Louis or Cincinnati or Vincennes.

The nature of the property, and its only practicable use, implied the continued use of all the line and all its equipment in the business of a common carrier of freight and passengers, under the supervision of the receiver so commissioned by all the courts.

And this receiver was as much the receiver of the last appointing as of the first appointing court.

It would defeat the purpose of such a receiver, to hold that at each strictly jurisdictional line he must re-arrange trains, drop as he entered Illinois the cars that strictly came under the Missouri order of receivership, and again at the Indiana line substitute a new set of cars strictly within that jurisdiction, to be again abandoned for others as the jurisdiction of Ohio or Kentucky might be entered. It would be neither reasonable or practicable for such a receiver to issue partial tickets to passengers, good only for the limit of a particular jurisdiction, and to be replaced by further purchases as different State lines were crossed.

It is evident that each order appointing a receiver contemplated not only the operation of the entire railway system between the three terminals, Cincinnati, Louisville, and St. Louis; but also a continuous system of trains and their uniform operation, under contracts for traffic and passenger transportation by the receiver; issue of through tickets available within all the jurisdictions; and a general unity in all the uses of the property.

That this is involved in the appointment of a receiver of railroad property seems to result from the nature of the property and the demands of public convenience in its continued use. The same line of thought has resulted in judicial approval of acts in themselves preferential of some creditors, but practically indispensable, such as settling and paying in full ticket balances, paying laborers and the like. (See Miltenberger v. R. R., 106, U. S. 311.)

For purposes of general traffic or passenger transportation it would therefore seem that the receiver, though hold-

ing several concurrent appointments as such, is fully and completely amenable to any one of the courts, whose officer he is, in respect to injuries attributable to his negligence.

A recent case in the Circuit Court of Louisiana confirms this proposition.

The Texas Pacific Railway, as is well known, extends from Shreveport, Louisiana, westward through the State of Texas. Its property lies in different States.

Receivers were appointed under orders of the courts in Texas and Louisiana, and the same persons were, it seems, named by each court. Through the negligence of the receivers or their employes, one Pope sustained serious personal injuries at a point within the State of Texas "between Fort Worth and Baird."

The claim for damages was asserted in the Circuit Court of the United States for the Eastern District of Louisiana, which court had appointed the receivers within its jurisdiction.

The court took cognizance of the claim in the chancery proceeding, and sustained it; though the injury had been sustained in a different jurisdiction, and in consequence of negligence committed in Texas. The negligent receiver also held appointment as such from the jurisdiction in which the accident occurred. (See Pope's case, 30th Fed. Rep. 170.)

The case is conceived to be entirely analogous to the one at bar.

The same action was had in another case before the same judge (Pardee, Circuit Judge), who sustained a claim in Louisiana founded on the receiver's negligence in Texas. A house caught fire from a locomotive at Marshall, Texas. The negligent receivers held appointments from both Texas and Louisiana courts. The right of action was treated as transitory, and the claim was allowed in Louisiana. (See 31 Federal Reporter, 526.)

A distinction might perhaps be drawn between cases of personal injury resulting in death and those not fatal. The

latter are personal, founded on common law, and transitory. The former can not be maintained in the absence of a statute allowing them; and it might well be argued that the local statute, being the foundation, would necessitate a local permission to sue the receiver there appointed. Such a case is not, however, here presented, and it would be unprofitable to search into the law that would, under circumstances of death, control the action.

It will be observed that the pleadings admit that the plaintiff, Crehore, was a passenger, having fully paid his fare from St. Louis to Louisville. A good test of this action may be found in that fact. The fare so paid entitled the plaintiff to a safe transportation, not only to the Kentucky line but into the depot at Louisville, within Kentucky jurisdiction. It can not be said that this through fare was paid to the receiver appointed by the Indiana court; for the consideration of its payment involved the use of real estate, tracks, and equipments within the jurisdictions and under the control of other courts.

The contract of carriage contemplated the use of every part of the property; and so it was used, as the pleadings admit, "as a continuous line, and as an entirety for the benefit of the Ohio & Mississippi Railway Company and of the creditors thereof." It can hardly be denied, therefore, that the receiver contracted quite as much in his capacity of Kentucky appointee to that office as in his capacity of receiver of the Indiana court. And if this be so, the duty of safe carriage was undoubtedly as much broken by the Kentucky receiver (party to the contract) as by the Indiana or Ohio receiver. For such a breach of contract-duty, on the part of a receiver appointed by it, the Louisville Chancery Court must have had power of remedy.

The case of Barton v. Barbour, 104 U. S. 126, settles the question that permission to sue a receiver must be had from the court appointing him. But the facts there stated seem to limit the application of the rule to a case where all the

property is within the jurisdiction of the appointing court. The railway property was (as there shown) entirely in Virginia, and a suit maintained in the District of Columbia could only be satisfied out of assets in Virginia, put into the receiver's hands by the Virginia court. But it is believed that the Massachusetts and Vermont rule as to railway corporations operating in two or more States remained unshaken.

The Vermont case held that, "if in fact they (the receivers) were common carriers over a line of railroad, it could be no defense to an action at law for a breach of duty or obligation arising out of business intrusted to them in that relation; that they were running and managing the line of railroad as receivers under the appointment of the Court of Chancery." (Blumenthal v. Brainard, 38 Vermont, 408, quoted and followed by Supreme Court of Massachusetts; Paige v. Smith, etc., 99 Mass. 396.)

If this doctrine be correct, it can not be controverted that the right of a court in possession within its territory of property in the hands of its receiver is even clearer.

It will be noticed that the Louisville Chancery Court, in restoring to the Ohio & Mississippi Railway Company the property in Kentucky, distinctly put the corporation on terms. It was stipulated that a bond should be executed, "conditioned for the payment of all the debts and liabilities contracted or incurred during the receivership of said property." (Printed record, p. 9.)

And the same order prescribes a further condition "for the payment of all claims adjudged, or to be hereafter adjudged, by this court or any one of the courts heretofore named, as being in the nature of preferential claims against it." (Printed record, p. 9.)

The railway corporation therefore received back the Kentucky property upon terms. The corporation occupies the attitude of a purchaser and can not dispute the provisions of the order which gives it title.

And, indeed, the order of the Indiana court, by which the railway corporation received back the property that was within that jurisdiction, stipulates exactly the same conditions. (Printed record, p. 22.)

And this stipulation in the Indiana order expressly provides that the corporation resuming possession shall be bound "for the payment of all claims adjudged or to be adjudged by this court or any one of the courts heretofore named," etc. (Printed record, p. 22.)

These concurrent and identical stipulations in the several orders show the purpose of the several courts to provide fully and efficiently for the ascertainment and payment of every liability affecting the property.

The effect of a chancellor's order as to property under his control and in the hands of his receiver returning to the possession of the railway company when such order of restoration is coupled with conditions, has been perfectly well settled by respectable authority. Thus, in Duncan v. Davis, 19th Fed. R. 478, the Circuit Court of the United States for Mississippi distinctly held, that if the decree turning back railway property to the corporation, provides that the corporation shall assume and be subject to the satisfaction of all claims, whether for personal injuries committed by the employes of the receiver, or arising while the property was under the receiver's control, then, whether the receiver was formally discharged or not, the court as a court of equity would enforce a proper adjustment and payment of all liabilities.

The difficulty which the learned judge found in that case was, that the equity court in restoring the railway property to the corporation failed entirely to incorporate into its order the necessary stipulation that all claims arising, whether for personal injuries or otherwise, should be paid; and it was said (see page 481), "that the decree being without reservation as to liabilities incurred during the receivership of the property defeated the action for personal injuries."

The application of this doctrine is perfectly plain. Pursuing the obvious converse, it is evident that where such stipulation is incorporated an action for personal injuries will receive the favorable consideration of the court. It may be remarked that in the case of Duncan v. Davis it appears to be a fact that the railway property was in different States, to wit, Alabama, Mississippi, Tennessee, and Kentucky; and that there was a series of ancillary decrees by which (as is inferable from the report) the same person was acting as receiver under different orders of appointment, thus presenting quite a parallel case to the one at bar. (See Duncan v. Davis, 19th Fed. R. 478.)

In 7th Fed. R. 537, will be found the reported case of Farmers Loan & Trust Co. v. Central Railroad of Iowa, from the Circuit Court of the United States for the District of Iowa. In that case the learned judge (Love) held that he had authority to enforce payment of certain liabilities against the railway property incurred by the receiver of his own appointment; and for the payment of which he had provided in the order discharging the receiver. This is the language used:

"I repeat, that if the receiver had been discharged and the property turned over to the new company unconditionally and without reservation, I am at a loss to see what legal remedy claimants, without established liens, would have. But the court did not in this case so turn over the property. It would have been a most unwise and unjust proceeding to have done so, leaving just claims and liabilities incurred by a receiver of its own appointment, without any provision whatever to enforce them. On the contrary this court, in the final decree of May 20, 1879, retained here the case of the Farmers Loan & Trust Company against the Central Railroad Company of Iowa and others, and in express terms reserved its jurisdiction of said cause to enforce the payment of debts and liabilities incurred by its receivers." (See Farmers Loan & Trust Company v. Central Railroad of Iowa, 7th Fed. R. 540.)

The language used in this record by the Kentucky court

in reserving power to enforce payment of just liabilities is quite similar to that of the U. S. Circuit Court just quoted. For not only is bond exacted by the court, conditioned in terms for the payment of such liabilities, but the property is turned back to the O. & M. R. R., "*subject to such orders as the court may hereafter make requiring it to pay claims or liabilities incurred during the receivership, or to settle, pay, or discharge any orders or judgments made in favor of settling and satisfying the claims of such receivership as aforesaid. The court retains this action for such other orders as may appear to the court to be necessary.* (See printed record, p. 10, at bottom.)"

In 17th Fed. R. 758, will be found the opinion of Circuit Judge McCrary in the case of Farmers Loan and Trust Company v. Central Railroad Company of Iowa. That learned judge held, that where a railway receiver was discharged and a sale of the property confirmed to a newly organized corporation, with a provision in the order of confirmation that the new company shall pay all the debts of the receiver and all claims or liabilities depending in the foreclosure suit, the new company could not and would not be permitted, after accepting the property, to question the validity of the order. (See Farmers Loan & Trust Company v. Central Railroad Co. of Iowa, 17th Fed. Reps. 758.)

The doctrine there announced by Judge McCrary, that a purchaser to whom a sale has been confirmed *sub conditione* is bound to pay the liabilities stipulated for, has been embodied in the text-books. Mr. High, in his Treatise on Receivers, Sec. 398, asserts this as the uniform rule of law, resting his conclusion largely upon the case in 62 Iowa, 728, Sloane v. Central Iowa R. R. His conclusion is, that " such a purchaser, however, having purchased subject to all liabilities growing out of the receiver's operation of the road, is liable in an action at law for the recovery of such damages, the injury having been caused by the negligence of the receiver's employes." (See High on Receivers, Second Edition, p. 354, Sec. 398. And to same effect, Sloane v. Central Railway Co., 62 Iowa, 728.)

Relying upon these authorities, which are believed to be entirely undisputed, we make the point, that in the case at bar the Ohio & Mississippi Railway Company took that property which was within the jurisdiction of the Chancery Court of Kentucky, under the conditions imposed by that court; and that it will not be heard to deny either the justice of those conditions or their obligatory force.

The Chancery Court of Kentucky reserved its power to inquire into the liabilities chargeable to the property on account of the receiver's neglect of duty. As is well settled, it might have done this either by issue out of chancery under its own supervision, or by reference to a court of law for inquiry as to the facts and damages. In either case the Kentucky Chancery Court reserved and retained within itself the amplest power to enforce the payment of such liabilities as it might adjudge chargeable against the property in respect of the receiver's neglect. It is true that the company thus assumed a contingent liability, but it is equally true that it got a very valuable property as the consideration of its so doing. And it is perfectly true that but for its undertaking to do that which was there exacted of it, it would never have been placed in possession of its Kentucky property. No more would the courts of Ohio, Indiana, and Illinois, without similar reservations, have returned to it the large and valuable properties in those States.

To sustain the conclusion arrived at by the court below, seems to us to carry with it a total remodeling of the accepted doctrine of transitory actions.

We submit that the judgment of dismissal is unsupported by authority, and not in harmony with legal opinions or usage.

The contract of transportation stipulated the use of the Kentucky property, and was, therefore, at least for plaintiff's benefit, a contract by the Kentucky appointee to the receivership, and, to that extent at least, a legal basis for this action. But we ask this court to reverse the cause on broader

grounds, and to announce as a doctrine of general application, that a corporation allowed to resume possession under condition that it make good all liabilities incurred during the receivership, is suable anywhere upon its undertaking, in respect of personal injuries caused by the negligence of the receiver or his employes.

A reversal is respectfully asked.

JOHN MASON BROWN,
Counsel for Plaintiff in Error.

ALEX. P. HUMPHREY,
GEORGE M. DAVIE,
Of Counsel.

Office Supreme Court U. S.
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CLERK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1888,

No. 272.

W. W. CREHORE, *Plaintiff in Error,*

VERSUS

OHIO & MISSISSIPPI RAILWAY CO., *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR ON DEFENDANT'S MOTION TO CORRECT THE FRAMING OF THE JUDGMENT OF THIS COURT.

The defendant in error has filed its motion desiring the court to incorporate in its mandate permission to the Circuit Court of the United States for the District of Kentucky to admit an amendment of the averments of citizenship; or at all events to strike from its judgment so much as is an absolute direction to remand the cause to the State court.

We submit that this motion can not prevail in view of the established practice of this court.

It will be observed that none of the authorities quoted by the learned counsel in support of his motion are of later date than the fall term of 1884. They therefore must yield to the later decisions, if such there be, which reach the point involved in the motion. We submit that the motion must be disposed of under the authority of the two latest cases that have come under the consideration of the court.

In the case of Cameron v. Hodges, 127 U. S., page 326, a case decided just one year since, this court had occasion to declare emphatically as to the right of amendment in respect of jurisdictional facts, and announced:

"There is no precedent known to us which authorizes an "amendment to be made, even in the Circuit Court, by which "grounds of jurisdiction may be made to appear which were "not presented to the State court on the motion for removal."

And within the past month, in the case of Stevens v. Nichols, No. 190 of the present term, this authority was followed in the third paragraph of the opinion. Justice Harlan, speaking for the court, says :

"3. The petition for removal does not allege the citizenship "of the parties, except at the date when it was filed, and it is "not shown elsewhere in the record that Stevens and Myrick "were at the commencement of the action citizens of a State "other than the one of which the plaintiff was at that date a "citizen. The court therefore can not consider the merits of "the case. The judgment is reversed upon the ground that it "does not appear that the Circuit Court had jurisdiction; and "the case is remanded to that court with instructions to send it "back to the State court."

It is submitted that these two authorities are decisive as to the present motion, and must control the right to amend in the Circuit Court.

The authorities cited in the last opinion of this court, that is, in the case of Stevens v. Nichols, are very many of them those quoted by counsel for defendant in error. Their effect, therefore, as precedents must be regarded as declared by this court, and as settled adversely to the contention of the defendant in error. An examination of the cases relied upon by the learned counsel, however, will show that in not a single opinion of this court referred to by him was there a direction to amend, or a permission to amend, or by any fair interpretation a suggestion that there was power of amendment in the Circuit Court upon the return of a case removed from a State court.

Thus in Parker v. Overman, 18 Howard, 137, although it is stated that there was an amendment to the petition for removal, it does not appear but what the amendment was in the State court prior to the removal, which would have been entirely per-

missible under the twelfth section of the judiciary act of 1789. It certainly is not stated in the opinion delivered by Mr. Justice Grier that there was any amendment made, *asked*, or *granted* in the Circuit Court, much less was there any *permission* given by the Supreme Court for any such amendment.

In Grace v. The American Central Insurance Company, 109 U. S., at pages 284–5, this court did comment upon the neglect to aver citizenship, and pronounced it fatal to jurisdiction, and did remand the case. It is to be seen, from other parts of the opinion, that the court deemed it convenient and in the interest of ultimate justice between the parties to indicate its views on certain questions affecting the merits of their controversy. The order remanding the case to the Circuit Court did not *permit* any amendment, much less did it *direct* any; and the case is not a precedent for an amendment of averments as to jurisdictional facts requisite for the removal of a case from a State court.

It is to be gathered from the subsequent case of M. C. & L. M. Railway Company v. Swan, 111 U. S., at page 386, that the purpose of this court in Grace v. American Central Insurance Company was to indicate that a new trial might come on in the Circuit Court (possibly by a dismissal without prejudice of the then action and the commencement of a new suit), in which event the averment of jurisdiction could be more completely made. But there is nothing in the case in 111 U. S. asserting or fairly implying any recognition of a right to amend averments essential to a removal.

The construction given by this court to the case of M. C. & L. M. Railway Company v. Swan, 111 U. S., is distinctly declared in the later report of Hancock v. Holbrook, 112 U. S. 231, as being in effect that a cause will, for want of proper jurisdictional averments, always be peremptorily reversed, with orders to remand to the State court.

The deduction sought to be drawn by counsel for defendant in error from the case of Thayer v. Life Insurance Company, 112 U. S. 719–720, is not warranted, as clearly appears from the most recent citation of that case. It is quoted by Mr. Justice

Harlan in the opinion rendered in Stevens v. Nichols, No. 190 of the present term, and is quoted as authority for the general and inexorable rule that the jurisdictional facts requisite for removal of a suit must distinctly and affirmatively appear in the record. No *permission* to amend was there given. No *right to amend was recognized.*

Learned counsel for defendant in error dwells with emphasis upon the case of Ayres v. Watson, 113 U. S. 594, which, however, we would observe in passing, being of an earlier date than Cameron v. Hodges, 127 U. S. 326, or Stevens v. Nichols, No. 190 of present term, must yield to the later decisions.

But it will be observed that in Ayres v. Watson the object of the court was simply to distinguish between those essential averments required by the second section of the Act of Removal of 1875 and those merely formal or modal proceedings which are defined in the third section. It was not at all necessary in that case to decide whether the omission of an averment of citizenship was fatal or could be cured by amendment; and it is respectfully submitted that that point is not covered by the decision in Ayers v. Watson, nor was it intended by the court that it should be so supposed.

It is respectfully submitted that, in view of the last reported case of Cameron v. Hodges, and the last announced decision in Stevens v. Nichols, the rulings of this court must be assumed as settled to the effect that where the failure of jurisdiction results from a want of averment of essential jurisdictional facts, for example, citizenship, the inexorable mandate will be one of reversal coupled with an order to send back the case to the State court from which it came.

We respectfully ask that the motion be denied.

JOHN MASON BROWN,

Of Counsel for Plaintiff in Error.

May 3, 1889.

Supreme Court of United States.

W. W. Crehore, *Plaintiff in Error,*

vs.

The Ohio & Mississippi Railway Company,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

Wm. M. Ramsey,
Lawrence Maxwell, Jr.,
Counsel for Defendant in Error.

Printed by James Barclay, 124-132 Canal St., Strobridge Building, Cincinnati, O.

SUPREME COURT OF UNITED STATES.

W. W. Crehore, *Plaintiff in Error*,

vs.

The Ohio & Mississippi Railway Company,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

This action was to recover damages for personal injuries received by the plaintiff in the state of Indiana, by the alleged negligence of the agents and servants of John M. Douglass, a receiver engaged in operating the railroad of the defendant in that state.

The court below arrested the cause from the jury, and rendered judgment for the defendant. This judgment was correct, because:

1st. The action was not authorized by the Circuit Court for the District of Indiana, the court whose officer had incurred the liability, according to the allegation of the complaint.

2d. The action was brought more than sixty days after the date of the discharge of the receiver, and the order of the Circuit Court of Indiana required all claims to be presented within sixty days.

3d. The order of the Circuit Court of Indiana merely substituted the Railroad Company for the Receiver, as custodian of the property, and reserved to that Court full jurisdiction of the cause for the purpose of determining all claims against the receivership which had arisen in Indiana, and did not authorize independent suits against either the receiver or the defendant.

By agreement, the several orders of the several courts of Ohio, Indiana, Illinois, and Kentucky, appointing receivers, have been made part of the record in the cause.

It will be seen, upon examination of these orders, that the principal proceeding was that which was commenced and prosecuted in the Circuit Court for Indiana. (See Exhibit No. 1). It was first in point of time, having been made Nov. 17, 1876. It directed all the property of the Company, wherever situated, to be placed in possession and control of the receivers appointed on that day. It concludes with these words (p. 4):

"This order, as to the appointment of receivers, and as to so much of the mortgaged property as is situated beyond the jurisdiction of this court, is subject to the approval of orders to be made in the Circuit Court of the United States for the Southern District of Illinois, and in the Circuit Court for the Southern District of Ohio, in supplemental proceedings to be instituted by the complainants in the said courts for the recognition of the receivers hereby appointed, and vesting them with full powers to act in such districts."

The order made by the Illinois Court was made on the following day. It recited the Indiana order, and extended the receivership to property within its own jurisdiction. It required no additional bond from the receivers. (See p. 9).

The petition does not state the character in which the defendant is sued, but it appears from the petition for removal (p. 15 R.), that it is a corporation under the laws of Indiana, and has no corporate existence in Kentucky; and it appears from the order of the Louisville Court of Chancery (p. 16 Ap.), that the line of railroad of defendant extends from Cincinnati, Ohio, through the states of Ohio, Indiana, and Illinois, to East St. Louis, Illinois, and that it was the owner of a branch line extending from North Vernon, Indiana, to Louisville, Kentucky. The proceeding in Kentucky was strictly ancillary, and the Chancery Court did not assume to exercise jurisdiction outside of Kentucky. Its order is made subject to the preceding orders of the courts in the other states as to all property outside of Kentucky. (P. 18, Ap.)

The injury to plaintiff occurred in Indiana, in January, 1884, while receiver Douglass was operating the line. As the law then existed, no suit could have been brought against him without the leave of the court which appointed him.

Barton *vs.* Barbour, 104 U. S., 126.

It is equally clear that, in the absence of an assumption, by the owner of property which is, or has been, in the hands of a receiver, of the obligations of the receiver, such owner is not liable therefor.

Ryan *vs.* Hays, 62 Tex., 42.

International Co. *vs.* Ormond, do 274.

Memphis Co. *vs.* Stringfellow, 44 Ark., 344.

Ohio Co. *vs.* Davis, 23 Ind., 560.

Bell *vs.* Co., 53 Ind., 57.

Metz *vs.* Co., 58 N. Y., 61.

The inquiry is thus narrowed to the question whether the defendant assumed the alleged obligation of the receiver to the plaintiff, and subjected itself to an action by the plaintiff.

Inasmuch as it was the officer of the Indiana Court which incurred the liability, that court alone possessed the power to dispose of it. What did that court order with reference to it?

The court below overruled a demurrer to the petition, because it contained an allegation that the defendant had made an unqualified assumption of the receiver's obligation to plaintiff in considération of the restoration of its property. But the answer brought into the record the orders of the Circuit Court for Indiana (p. 21, R. 23). Under the order of April 1, 1884 (R. p. 23), that defendant received and held its own property, *as Receiver*. It was ordered that "the said Ohio & Mississippi Railway Company shall take and hold the said property in place and stead of said receiver, under the authority of the court, and subject to such orders as it may hereafter make, requiring it to pay any and all claims or liabilities incurred during the receivership," etc. And the order proceeds: "And it is further ordered that all claims against said receivership shall be presented to the court for adjudication within sixty days from this date, and not thereafter."

In the same order is found the approval of the bond required by the order of March 17th, 1884.

The order of March 17 contemplated an absolute delivery of the property of the defendant, and reliance upon the bond

alone for the protection of the receiver, but the views of the court had manifestly changed, so that, on April 1st the order provided for retention of possession by the court and control of the property, and the defendant took it "*in place and stead of such receiver, and under the authority of the court*," and subject to future orders of the court.

The Louisville Chancery Court, on April 2d, 1884, upon presentation of the Indiana order of March 17, 1884, ordered the receiver to surrender all of the property which was situated in Kentucky, unto the defendant, which should "take, hold, and operate the property aforesaid *in place of said receiver*, and subject to such orders as the court may hereafter make, requiring it to pay claims," etc. (R. p. 27.)

An examination of these orders shows that the several courts which had taken jurisdiction of the cause, had uniformly acted upon the principle that they would not interfere with each other in the control of the property, or of their respective receivers. For, while there was but one receiver, there were four receiverships, each independent of all others. And, in delivering the property to the Company, in April, 1884, the courts adhered to the same rule, each reserving to itself the right to pass upon and enforce only claims which had arisen within the territorial limits of its own jurisdiction.

The present is purely an action of *tort*. The petition alleges (R. p. 5) that the "plaintiff was greatly injured by and because of, and through, the willful neglect of the said John M. Douglass, receiver, and his assistants, agents," etc., "then in charge of said train," etc.; and, again, after describing the accident, the petition proceeds: "all of which

was occasioned by the willful neglect," etc. These allegations are repeated in various forms. Learned counsel for plaintiff in error argues that the petition alleges a contract, and, inferentially, that the action is for the breach of such contract, and that it was as much the contract of the receiver of the Louisville Court as of the receivers appointed by other courts. This is answered by the fact that the action sounds in tort only. There is no allegation of a contract with Douglass. It is alleged that fare was paid by plaintiff, but to whom it was paid is not stated. The transit began in St. Louis, Mo. There was no receivership in Missouri. Railroad companies, throughout the United States, recognize and honor tickets sold over their respective lines by connecting lines, and all that could be inferred from the pleadings in this case would be that plaintiff was rightfully on board a train, in Indiana, which train was under control of an officer of the U. S. Circuit Court for Indiana, who must be presumed to have authorized some one to sell a ticket which the plaintiff held, and which entitled him to ride upon the road through the state of Indiana. Who sold the ticket, what its terms were, we do not know. There is no allegation upon these subjects. The fact that the several courts named took jurisdiction of the several causes, and severally took possession of different parts of the property of the company, excludes the assumption made by plaintiff's counsel that the receiver in one of the states would, or could, undertake to control the use of the property outside the jurisdiction of the court appointing him, or make contracts with third persons, which another receiver would be bound to observe. Passengers upon a

line thus situated, must, in the absence of allegation and proof, be presumed to be in contract relations with each receiver, as to his own division. If the foregoing view be correct, there was no error in the action of the court below. If the foregoing be incorrect, it is only because the Circuit Court for Indiana had exclusive jurisdiction over the property, and over the receivers, in all of the states in which orders were made. It was held by this court in Muller *vs.* Dows, 94 U. S., 444, that the Circuit Court in one state has jurisdiction to foreclose a mortgage upon an entire railroad, although a part of the line extends into another state, where the court has jurisdiction of the parties—the mortgagor and the trustees. In this state of the law, it is plain that the court for Indiana had full jurisdiction of the entire subject matter, and that the ancillary suits were unnecessary at least. But for the permission given in the order made by that court, the actions subsequently brought in other states could not have been sustained. If sustained, it must be by virtue of such permission, and according to its terms, and the Louisville Court obtained jurisdiction only of property actually in Kentucky, and transactions of its own receiver in reference thereto.

The case cited from 30th F. R., p. 170, does not bear upon the subject under discussion. It does not appear that there were two receiverships. The Court in Louisiana, was evidently dealing with its own receiver, although the acts in question occurred in Texas. This might well be, under the authority of Muller *vs.* Dows.

Second. The Circuit Court of Indiana, required all claims against its receiver to be presented to itself, and fixed the

period of sixty days as the limit of time within which it should or could be done (R. p. 24). As this claim was not presented to that court at all, it is not important to consider the effect of the limitation as to time.

It is to be observed, however, that the power reserved to itself by the Louisville Court, was limited. 1st. To claims arising within the state of Kentucky. 2d. To such claims as had arisen within the state of Kentucky, and which should be presented to the court within sixty days, next after April 2d, 1884 (R. p. 27). What authority was possessed by the Louisville Court to authorize a suit at law against the Ohio & Mississippi Railway Company touching a claim which arose in Indiana? What authority did it possess, in that behalf, after the expiration of sixty days from the date of its order discharging the receiver? The order permitting the plaintiff to bring this action was made July 5, 1884, more than four months after the order discharging the receiver was made. The court discharged the receiver on April 2, 1884. The entire property of the Railway Company, other than that which was situated in Kentucky, was already in possession of the Company, by virtue of the orders made March 17 and April 1, in Indiana. The Kentucky Court had, on April 2, been advised of the orders made in Indiana, and of compliance therewith by the company, in all respects, including the giving of a bond to the receiver, and it ordered the delivery of the Kentucky property, without further conditions, with a single reservation, to-wit: that the company should take and hold the property (*i.e.* the Kentucky property), "subject to such orders as the court may hereafter make, requiring it to pay claims or lia-

bilities incurred *during the receivership*," etc. (R. p. 27); and requiring all claims to be presented within sixty days. The power reserved did not authorize the assumption of jurisdiction to hear, or take any action with reference to, claims which arose in Indiana, under another "Receivership." The Indiana receivership was in the case of King *vs.* O. & M. Co., the Kentucky receivership was created in the case of Garrett *vs.* do.

It follows that, if this action can be maintained, it must be upon the ground that there was an undertaking upon the part of the company, to all creditors, to pay all liabilities of the receiver, in Indiana, and that this undertaking was of such a character as to create privity between the company and such creditors, which would enable them to maintain actions upon it. There was no such undertaking. The agreement of the company was, that it would hold the property subject to the orders of the court, and pay such claims as the court should order paid. The plaintiff so understood the order. This action was not brought upon the assumption, that defendant had made a contract to pay all claims against the receiver, but was based upon the theory, that the defendant held the property subject to the equitable jurisdiction of the Chancery Court, which possessed the power to pass upon the plaintiff's demand, and enforce it, and could, for the information of the chancellor's conscience, send an issue out of Chancery to the law Court. (R. p. 4.)

There was no agreement to pay liabilities generally. The undertakings of the defendant were as follows (see Record, p. 9):

1st. To file consent of Allen Campbell. This was done.

2d. To deliver to Douglass, a bond in the sum of $500,000, payable to him, for the benefit of whom it might concern, conditioned, etc.

Upon compliance with these conditions, the property was to be taken and held by defendant, "in place of said receiver," and "subject to such orders as the court" might thereafter make, etc.

Plainly, there was no general undertaking, or personal agreement, of defendant to pay all liabilities of the receiver. It agreed to give a bond of limited amount. Action upon that bond is the only one which, upon any construction of the order, could be brought against it. *Defendant was not required to be an obligor of this bond.* It was sufficient that it was of such a character as to be satisfactory to the Court. The bond itself is not set out in the record. It only appears that bond was given. Whether defendant signed the bond or not does not appear. If it did sign it, and an action were brought upon it, it would be a complete defense that defendant had paid $500,000 upon claims, properly adjudicated in any of the courts named. This consideration establishes that there was no agreement to pay these liabilities upon which an action at law would lie against the defendant, in favor of any of the creditors of the receiver.

It is unnecessary to examine the authorities relating to the right of third persons to sue upon contracts made between two persons. In all of these cases (the class referred to in Bank *vs.* Lodge 98 U. S., 123), in which it was held that a third person could sue, there was not only a delivery

to the defendant of property in which plaintiff had an interest, but there was an *express agreement* to pay the plaintiff.

Brewer *vs.* Dyer, 7 Cush., 340.

Carnegie *vs.* Morrison, 2 Metc., 381.

Respectfully submitted,

Wm. M. Ramsey,
Lawrence Maxwell, Jr.,
Counsel for Defendant in Error.

Office Supreme Court U. S.
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APR 29 1889
JAMES. H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1888,

No. 272.

W. W. CREHORE, *Plaintiff in Error*,

vs.

THE OHIO & MISSISSIPPI RAILWAY CO.

MOTION AND BRIEF OF DEFENDANT IN ERROR.

MOTION.

The Ohio & Mississippi Railway Co., defendant in error, respectfully represents to the court, that at the time of the commencement of said action in the Louisville Law and Equity court, as well as at the time of the filing of the petition for removal, the plaintiff was a citizen, as well as a resident of the state of Ohio, and the defendant a citizen of the state of Indiana; but that by inadvertence the petition for removal failed to state the citizenship of the parties at the time of the commencement of the action.

The defendant in error, therefore, prays that the judgment of reversal herein may be so framed as to omit therefrom an absolute direction to the Circuit court, to remand the cause to the Louisville Law and Equity court, to the end that this defendant may take such steps in the Circuit court, or in the Louisville Law and Equity court

as may be proper for the correction and amendment of said petition for removal, and of the record and proceedings in that behalf.

LAWRENCE MAXWELL, Jr.,
Of Counsel for Defendant in Error.

BRIEF.

The record does not show affirmatively the citizenship of the parties at the commencement of the action in the State court. I concede, therefore, that the judgment should be reversed. And if the parties were in fact not citizens of different states when the action was commenced, as was the case in Railway Company *vs.* Swan, 111 U. S., 379, there could be no objection to an order in this court directing the Circuit court to remand the case at once to the State court.

But while the proceedings for removal were defective, it is admitted that the case was really one which the defendant was entitled to have removed, and the defendant, therefore, asks for an opportunity to take such steps in the State and Circuit courts as may be proper for the amendment and correction of its defective proceedings for removal. That opportunity is of course foreclosed if this court enters an absolute order for the remanding of the case to the State court.

The defect in the petition for removal was not noticed below; the order of removal was made without objection, and no exception thereto was taken at any time by the plaintiff. The circumstances therefore justify the granting

of the present application, unless it must be refused upon the ground that the lower courts would have no power, if the case were remanded for further proceedings, to authorize an amendment and correction of the proceedings for removal. The question therefore is whether, if this court were simply to reverse the judgment and remand the case to the Circuit court, it would be competent for the defendant to take steps there, or in the State court, to correct and amend its former defective proceedings for removal, so as to make the record conform to the fact, and to secure the removal to which it was really entitled. I submit that the answer to this question is clear upon principle, and furthermore that the question is determined in our favor by repeated decisions of this court.

In Parker *vs.* Overman, 18 How., 137, the petition for the removal of the case from the State court into the Circuit court of the United States, averred simply that the parties "resided," one of them in Tennessee, and the other in Maryland. This court in passing upon the question of jurisdiction said (p. 141): "Citizenship and residence are not synonymous terms; but as the record was afterwards so amended as to show conclusively the citizenship of the parties, the court below had, and this court have, undoubted jurisdiction of the case."

In Grace *vs.* American Central Insurance Co., 109 U.S., 278, there was the same defect as in Parker *vs.* Overman, in the proceedings for removal. The petition for removal alleged that, the defendant was a corporation of Missouri, and that the plaintiffs resided in New York, but the record failed to show of what state the plaintiffs were citizens.

Said this court (p. 285): "As the judgment must be reversed and a new trial had, we have felt it to be our duty, notwithstanding the record, as presented to us, fails to disclose a case of which the court below could take cognizance, to indicate for the benefit of parties at another trial, the conclusion reached by us on the merits. And we have called attention to the insufficient showing as to the jurisdiction of the Circuit court, so that, *upon the return of the cause, the parties may take such further steps, touching the matter, as they may be advised.*" And the judgment was accordingly "reversed and the cause remanded, with directions to set aside the judgment, and for such further proceedings as may not be inconsistent with this opinion." Referring to this case, and adverting to the fact that this court passed upon all the questions in the case affecting its merits, notwithstanding the judgment of reversal for want of jurisdiction, Mr. Justice Matthews, in Railway Co. *vs.* Swan, 111 U. S., 379, at p. 386, said: "It was thought convenient and proper to do so, in that case, because the record itself made it probable, that its omission of the statements necessary to show jurisdiction was inadvertent, *and might be supplied for a future trial in the same court.*" The inadvertent omissions referred to, which this court thought might be supplied upon the remanding of the case, were precisely the omissions in the record at bar, viz: an omission in the petition for removal to state the citizenship of the parties.

Thayer *vs.* Life Association, 112 U. S., 717, was a removal case in which the record did not disclose the citizenship of one of the parties. Said this court (p. 719): "Since it does not

appear affirmatively that the Circuit court had jurisdiction by reason of the citizenship of the parties, the decree must be reversed with directions, *unless such jurisdiction, upon the return of the cause, shall be made to appear*, to remand the suit to the State court."

In view of these decisions, the statement attributed to Mr. Justice Miller, in the report of Cameron *vs.* Hodges, 127 U. S., 322, that no precedent was known which would authorize an amendment to be made in the Circuit court, by which grounds of jurisdiction might be made to appear, which were not presented to the State court on the motion for removal, would seem to be inadvertent. The point really decided in Cameron *vs.* Hodges is however not open to dispute, for it is clear that the record in the Circuit court can not be cured, as was there attempted, by affidavits filed in this court.

In Houser *vs.* Clayton, 3 Woods, 273, an amended petition for removal was filed by leave of court, and one of the grounds for remanding the case was that such amended petition was unauthorized by law. But Mr. Justice Bradley overruled the motion, saying (p. 277): "There is no good reason why a defendant should not be allowed to amend his petition, if by inadvertence it is imperfect as first presented."

In Barclay *vs.* The Levee Commissioners, 1 Woods, 254, there was a mistake in the petition for removal filed in the State court, as to the citizenship of the parties, but Mr. Justice Bradley held that the mistake was cured by a supplemental and amended petition filed in the Circuit court after the removal of the cause.

In Ayres *vs.* Watson, 113 U.S., 594, the petition for re-

moval was filed after the case had been twice tried in the State court, and more than two years after the time had expired for filing a petition for removal under the act of 1875. The case therefore presented squarely the question, to use the language of the opinion itself, of "the effect of the act of 1875 upon the jurisdiction of the court when the application is made at a later period of time than is allowed by that act." This court answered that question, without dissent, in favor of the jurisdiction of the Circuit court. Said Mr. Justice Bradley, in delivering the opinion, p. 598: "The second section defines the cases in which a removal may be made; the third prescribes the mode of obtaining it, and the time within which it should be applied for. In the nature of things, the second section is jurisdictional, and the third is but modal and formal. The conditions of the second section are indispensable, and must be shown by the record; the directions of the third, though obligatory, may to a certain extent be waived. Diverse state citizenship of the parties, or some other jurisdictional fact prescribed by the second section, is absolutely essential, and can not be waived, and the want of it will be error at any stage of the cause, even though assigned by the party at whose instance it was committed. Mansfield & Coldwater Railway Company *vs.* Swan, 111 U.S., 379. Application in due time, and the proffer of a proper bond, as required in the third section, are also essential if insisted on, but, according to the ordinary principles which govern such cases may be waived, either expressly or by implication. We see no reason, for example, why the other party may not waive the required bond, or any informalities in it, or

informalities in the petition, provided it states the jurisdictional facts; *and if these are not properly stated, there is no good reason why an amendment should not be allowed, so that they may be properly stated.* So, as it seems to us, there is no good reason why the other party may not also waive the objection as to the time within which the application for removal is made. It does not belong to the essence of the thing; it is not, in its nature, a jurisdictional matter, but a mere rule of limitation. In some of the older cases the word jurisdiction is often used somewhat loosely, and no doubt cases may be found in which this matter of time is spoken of as affecting the jurisdiction of the court. We do not so regard it."

This decision, that the time prescribed by the third section of the removal act, for the filing of the petition, does not, "belong to the essence of the thing," and is not, "in its nature, a jurisdictional matter," disposes of the only argument that can be urged against the power of a court to permit the amendment of a petition for removal after the time prescribed by the act for the filing of an original petition, for that argument rests upon the assumption, thus shown to be false, that the jurisdiction of the court expires with the effluxion of time. The jurisdiction does not expire, but remains if the jurisdictional facts exist, and whether those facts shall be permitted to be brought into the record, fully and completely, depends not at all upon the power of the court, but upon the exercise of its just discretion under all the circumstances of the case. To quote the language of this court, in Robertson *vs.* Cease, 97 U. S., 646, 651, "such a course is peculiarly proper in this case, in view of the failure of the

plaintiff in error to make, in the court below, the precise question of jurisdiction which he urges upon our consideration." It is not just that the defendant should lose the benefit of a jurisdiction to which it was entitled under the law, because of the mere inadvertent omission of its counsel, to which attention was never directed, and which was overlooked, not only by all of the parties and counsel, but by the court itself, and discovered by no one until long after the cause had come into this court.

In Stevens *vs.* Nichols, decided at this term, there was no application in this court to have the cause remanded for further proceedings in the Circuit court, nor any showing that the citizenship of the parties was in fact such at the commencement of the action, as to have warranted the removal. The point now raised in this case was therefore not presented or passed upon, and the circumstance that the judgment of reversal directed that the case should be remanded to the State court, can not be regarded as an adjudication of the point presented now, much less as an overruling of the long line of decisions in this court, to which I have called attention.

Respectfully submitted,

LAWRENCE MAXWELL, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

W. W. CREHORE
vs.
OHIO & MISSISSIPPI RAILROAD CO.

It is hereby stipulated that the orders of the several courts of the United States and of the State of Kentucky, appointing receivers of the property of the defendant in 1876, shall be made a part of the record in this cause, and that a copy of the order of the Circuit Court of the United States for Indiana, is hereto attached, marked No. 1; that of the Circuit Court for the Southern District of Illinois as No. 2; that of the Circuit Court for the Southern District of Ohio as No. 3; and that of the Louisville Chancery Court as No. 4.

That John King, Jr., resigned, and John M. Douglass succeeded him, by appointment of each of said Courts.

Jno. Mason Brown
For Plaintiff in Error.

Lawrence Maxwell Jr.
For Defendant in Error.

EXHIBIT No. 1.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF INDIANA—November Term, 1876.

November 17, 1876.—Before Hon. Walter Q. Gresham, Judge.

WILLIAM KING, JAMES G. ROSS, *et al.*,
vs.
THE OHIO & MISSISSIPPI RAILWAY CO., *et al.*
} *No.* 4785. *Chancery.*

Now, on this 17th day of November, 1876, came the complainants, by George Hoadly, William T. McClintock, and Henry Crawford, their solicitors, and presented to the Court their said bill of complaint, duly verified by affidavit, and in pursuance of the prayer of such bill asked for the appointment of receivers of the mortgaged property in said bill mentioned.

And thereupon the said Ohio & Mississippi Railway Company enters its full appearance to this action and to said motion for a receiver by its solicitor, Charles A. Beecher, and admits all and singular the allegations of said bill of complaint, and it appearing to the Court that the material allegations of said bill of complaint are true, and that the complainants are entitled to the relief therein prayed for, so far as the appointment of receivers is concerned.

It is therefore ordered and decreed that Daniel Torrance and John King, Jr., be and they are hereby appointed receivers of the property, estate and franchises of the said Ohio & Mississippi Railway Company, and especially of all and singular the line of railroad in the said bill described, extending from Cincinnati, Ohio, through Vincennes, Indiana, to East St. Louis, in the State of Illinois, together with the branch line from North Vernon, Indiana, to Louisville, Kentucky, and the branch from Shawneetown, Illinois, through Springfield to Beardstown, together with all the equipment, appurtenances, fixtures, supplies, material,

books, papers and accounts belonging or appertaining unto said main line or branches, or used in stating the accounts of the said corporation, and all the moneys, assets and other property of the said corporation.

And the said receivers are ordered to each execute a bond in the sum of two hundred thousand dollars with sureties, to be approved by either the District Judge of the Northern District of Illinois, or the District Judge of the Southern District of Illinois, or the Circuit Judge of the Seventh Judicial Circuit.

And on the execution and approval of such bond, the said receivers are ordered to forthwith enter into the possession and management of all and singular the said property of which they are appointed receivers, and for the purpose of executing the trust with which they are herewith invested, they are hereby authorized to use and employ in the maintenance and operation of said railway all the property and franchises of the said Ohio & Mississippi Railway Company as fully and completely in every respect as the said corporation might lawfully do under its charter, and the laws of the several States where its property is situate, and during all such possession the said receivers are authorized to levy and collect tolls and receive all the income derived therefrom, and hold and disburse the same under the orders of this Court from time to time in the premises.

And all the officers, agents and employes of the said Ohio & Mississippi Railway Company are ordered and required forthwith on the demand of said receivers to disclose and deliver over unto such officers of this Court all and singular the property, books, papers, moneys and assets of the said corporation in their control, possession or authority; and all such officers, agents and employes are hereby enjoined and restrained from in any manner inter-

fering with the possession of said receivers or their management of such trust property.

And out of the moneys which from time to time come into their hands as such receivers from the operation of said trust property, they are authorized and required to pay all the operating expenses incurred in managing the said property and the further expenditures for necessary and proper repairs and renewals to keep said trust property in efficient state to discharge its duty as a public carrier. And shall also pay all and singular the State, county, and other taxes which may be legally levied on the said property or any part thereof. And said receivers are further authorized and directed to pay and discharge all the ticket and freight balances now justly due to connecting roads.

And after the said payments being made, the said receivers are authorized to use the surplus earnings in the payment and discharge of all past due obligations of said Ohio & Mississippi Railway Company, incurred for labor done or supplies furnished in the actual operation of said line of railroad or branches, at any time during the four months immediately preceding the entry of this order.

In the discharge of their duties as such receivers they are authorized to employ, retain and discharge from time to time, at their discretion, all such agents and employes which they may deem necessary or proper to efficiently operate the said trust property; and they are directed to open proper books of account, and state therein the receipts and disbursements of their said trust, and shall from time to time make and file with the clerk of this court monthly reports of their trust.

This order, as to the appointment of receivers and as to so much of the mortgaged property as is situate beyond the jurisdiction of this court, is made subject to the approval of orders to be made in the Circuit Court of the United States

for the Southern District of Illinois, and in the Circuit Court of the United States for the Southern District of Ohio, in supplemental proceedings to be instituted by the complainants in the said courts for the recognition of the receivers hereby appointed, and vesting them with full powers to act in such districts.

[*Properly certified.*]

EXHIBIT No. 2.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

November 18, 1876.—Present, Hon. Samuel H. Treat, Dist. Judge.

WILLIAM KING, JOHN W. GARRETT, ROBERT GARRETT, and T. HARRISON GARRETT, partners under the firm name of ROBERT GARRETT & SONS and JAMES G. ROSS,
vs
OHIO & MISSISSIPPI RAILWAY CO., ALLAN CAMPBELL and FARMERS LOAN AND TRUST COMPANY.
} *In Chancery.*

Now, on this 18th day of November, 1876, came the complainants by George Hoadly, William T. McClintock and Henry Crawford, their solicitors, and presented to the court their bill of complaint, duly verified by affidavit, and in pursuance of the prayer of said bill asked for the appointment of receiver of the mortgaged property in such bill mentioned; and thereupon the said the Ohio & Mississippi Railway Company, entered its full appearance to this action and to said motion for a receiver by its solicitor, Charles A. Beecher, and admits all and singular the averments of said bill of complaint; and it appearing to the court that the material allegations of said bill of complaint are true, and that the complainants are entitled to the relief therein prayed for so far as the appointment of receiver is concerned; and it further appearing that on the 17th day of

November, 1876, in a certain suit in equity then pending in the Circuit Court of the United States, within and for the District of Indiana, wherein the said complainants were complainants, and the said defendants were defendants, a certain interlocutory order was made and entered in the words and figures following, that is to say:

WILLIAM KING, JAMES G. ROSS, *et al.*,
vs.
THE OHIO & MISSISSIPPI RAILWAY COMPANY, *et al.* } *Chancery.*

Now, on this 17th day of November, 1876, came the complainants by George Hoadly, William T. McClintock and Henry Crawford, their solicitors, and presented to the court their said bill of complaint, duly verified by affidavit, and in pursuance of the prayer of such bill asked for the appointment of receiver of the mortgaged property in such bill mentioned, and thereupon the said Ohio & Mississippi Railway Company entered its full appearance to this action, and to said motion for a receiver by its solicitor, Charles A. Beecher, and admits all and singular of said bill of complaint, and it appearing to the court that the material allegations of said bill of complaint are true, and that the complainants are entitled to the relief therein prayed for, so far as the appointment of receiver is concerned.

It is therefore ordered and decreed that Daniel Torrance and John King, Jr., be and they are hereby appointed receivers of the property, estate and franchises of the Ohio & Mississippi Railway Company, and especially of all and singular the line of railroad in this bill described, extending from Cincinnati, Ohio, through Vincennes, Indiana, to East Lines, in the State of Illinois, together with the branch line from North Vernon, Indiana, to Louisville, Kentucky, and the branch line from Shawneetown, Illinois, through

Springfield, Illinois, to Beardstown, together with all the equipment, appurtenances, fixtures, supplies, material, books, papers and accounts belonging or appertaining unto said main line or branches, or used in stating the acoounts of said corporation, and all moneys, assets and other property of the said corporation; and the said receivers are ordered to each execute a bond in the sum of $200,000, with sureties to be approved by either the District Judge of the Northern District of Illinois, or the District Judge of the Southern District of Illinois, or the Circuit Judge of the Seventh Judicial Circuit. And on the execution and approval of such bond, the said receivers are ordered to forthwith enter into and in possession and management of all and singular the said property of which they are appointed receivers, and for the purpose of executing the trust invested, they are hereby authorized to use and employ in the operation and maintenance of said railway all the property and franchises of the said Ohio & Mississippi Railway Company, as fully and completely in every respect as the said corporation might lawfully do under its charter, and the laws of the several states where its property is situated, and during all such possession the said receivers are authorized to levy and collect tolls, and receive all the income derived therefrom, and hold and disburse the same under the orders of this court from time to time in the premises, and all the officers, agents and employes of the said Ohio & Mississippi Railway Company are ordered and required forthwith on the demand of said receivers to disclose and deliver over unto such officers of this court all and singular the property, books, papers, moneys and assets of the said corporation in their control, possession or authority. And all such officers, agents and employes are hereby enjoined and restrained from in any manner interfering with the possession of said receivers or their management of such trust property, and

out of the moneys which from time to time come into their hands as such receivers; from the operation of said trust property they are authorized and required to pay all the operating expenses incurred in managing the said property, and the further expenditures for necessary and proper repairs and renewals, to keep said trust property in an efficient state, to discharge its duties as a public carrier, and shall also pay all and singular the state, county and other taxes which may be legally levied on the said property or any part thereof, and after the said payments are made the said receivers are authorized to use the surplus earnings in the payment and discharge of all past obligations of said Ohio & Mississippi Railway Company, incurred for labor done or supplies furnished in the actual operation of said line of railroad or branches, at any time during the four months immediately preceding the entry of this order. In the discharge of their duties as such receivers they are authorized to employ, retain and discharge from time to time, at their discretion, all such agents and employes which they may deem necessary or proper to efficiently operate the said trust property, and they are directed to open proper books of account, and state therein the receipts and disbursements of their said trust, and shall from time to time make and file with the clerk of this court monthly reports of their trusts. This order, as to the appointment of receivers, and as to so much of the mortgaged property as is situated beyond the jurisdiction of this court, is made subject to the approval of orders to be made in the Circuit Court of the United States for the Southern District of Illinois, and the Circuit Court of the United States for the Southern District of Ohio, on supplemental proceedings to be instituted by the complainants in the said courts for the recognition of the receivers hereby appointed, and vesting them with full powers to act in such districts.

A true copy—Attest—J. D. Howland.

And it further appearing to the court that the said Receivership ought to be so extended as to embrace all the subjects and matters in said bill of complaint, so far as the same are within the jurisdiction of this court. It is, therefore, adjudged and decreed that the said Daniel Torrance and John King, Jr., be, and they are, hereby appointed Receivers of all the said mortgaged premises and property, so far as the same are or may come within the jurisdiction of this court, with all the powers, rights and privileges, and subject to the limitations, duties and restrictions in said order of the Circuit Court for the District of Indiana aforesaid specified. This appointment to take effect and be in force from and after the filing in the Clerk's office of said last-named court of the bonds required by said order, which bonds shall stand and operate as security for the performance by said Receivers of their duties within the jurisdiction of this court, as effectually and to the same extent as in the District of Indiana; and it is further ordered that in the discharge of their duties as such Receivers, they, the said Torrance and King, as such Receivers, shall receive from and pay to all other and connecting railroad companies any and all balances of money due, and to grow due on account of the transportation of freight and passengers. This order is made with leave to any of the defendants or any person interested in the said mortgaged property, or as creditor of said company to appear and intervene for their interests within sixty days after the first day of the next term of this court, and ask to set aside or modify the same in any particular.

[*Properly certified.*]

EXHIBIT No. 3.

THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION—*ss.*

At a stated term of the Circuit Court of the United States of America, within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit of the United States of America, begun and had in the court rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being the 3d day of that month, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States of America, the one hundred and first.

Present, the Honorable Philip B. Swing, District Judge.

On Monday, the 20th day of November, 1876, among the proceedings had were the following, to wit:—

WILLIAM KING, JAMES G. ROSS, *et al.*, *vs.* THE OHIO & MISSISSIPPI RAILWAY COMPANY, *et al.* } *Chancery. Receivers Appointed.*

Now, on this 20th day of November, 1876, came the complainants, by George Hoadly, William T. McClintock and Henry Crawford, their solicitors, and presented to the court their bill of complaint, duly verified by affidavits, and in pursuance of the prayer of said bill, asked for the appointment of receivers of the mortgaged property in such bill mentioned; and thereupon the said The Ohio & Mississippi Railway Company, entered its full appearance to this action and to said motion for a receiver, by its solicitor, Charles A. Beecher, and admits all and singular the averments of said bill of complaint; and it appearing to the court that the material allegations of said bill of complaint are true, and that the complainants are entitled to the relief therein

prayed for, as far as the appointment of receiver is concerned.

And it further appearing that on the 17th day of November, 1876, in a certain suit in equity then pending in the Circuit Court of the United States, within and for the district of Indiana, wherein the said complainants were complainants, and the said defendants were defendants, a certain interlocutory order was made and entered in the words and figures following, that is to say:

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF INDIANA.

WILLIAM KING, JAMES G. ROSS, *et al.*
vs.
THE OHIO & MISSISSIPPI RAILWAY COMPANY, *et al.* } *Chancery.*

Now, on this 17th day of November, 1876, came the complainants, by George Hoadly, Wm. T. McClintock and Henry Crawford, their solicitors, and presented to the Court their said bill of complaint, duly verified by affidavit, and in pursuance of the prayer of such bill asked for the appointment of receiver of mortgaged property in such bill mentioned; and thereupon the said The Ohio & Mississippi Railway Company entered its full appearance to this action, and to said motion for a receiver by its solicitor, Chas. A. Beecher, and admits all and singular the averments of said bill of complaint; and it appearing to the court that the material allegations of said bill of complaint are true, and that the complainants are entitled to the relief therein prayed for, so far as the appointment of receiver is concerned.

It is therefore ordered and decreed that Daniel Torrance and John King, Jr., be and they are hereby appointed receivers of the property, estate and franchises of the Ohio & Mississippi Railway Company, and especially of all and sin-

gular the line of railroad in the bill described, extending from Cincinnati, Ohio, through Vincennes, Indiana, to East St. Louis, in the State of Illinois, together with the branch line from North Vernon, Indiana, to Louisville, Ky., and the branch line from Shawneetown, Ill., through Springfield, Ill., to Beardstown, together with all the equipments, appurtenances, fixtures, supplies, material, books, papers, and accounts, belonging or appertaining unto said main line or branches, or used in stating the accounts of said corporation, and all the moneys, assets and other property of the said corporation; and the said receivers are ordered to each execute a bond in the sum of $200,000, with sureties to be approved by either the District Judge of the Northern District of Illinois, or the District Judge of the Southern District of Illinois, or the Circuit Judge of the Seventh Judicial Circuit.

And in the execution and approval of such bond, the said receivers are ordered to forthwith enter into and in possession and management of all and singular the said property of which there are appointed receivers, and for the purpose of executing the trust with which they are herewith invested, they are hereby authorized to use and employ in the operation and maintenance of said railway, all the property and franchises of the said Ohio & Mississippi Railway Company, as fully and completely in every respect as the said corporation might lawfully do under its charter, and the laws of the several States where its property is situated, and during all such possession the said receivers are authorized to levy and collect tolls, and receive all the income derived therefrom, and hold and disburse the same under the orders of this court, from time to time, in the premises; and all the officers, agents and employes of the said Ohio & Mississippi Railway Company are ordered and required forthwith on the demand of said receivers to disclose and

deliver over unto such officers of this court, all and singular the property, books, papers, moneys and assets of the said corporation, in their control, possession or authority; and all such officers, agents and employes are hereby enjoined and restrained from in any manner interfering with the possession of said receivers or their management of such trust property; and out of the moneys which from time to time come into their hands, as such receivers, from the operation of said trust property they are authorized and required to pay all the operating expenses incurred in managing said trust property, and the further expenditures for necessary and proper repairs and renewals to keep said trust property in an efficient state to discharge its duty as a public carrier; and shall also pay, all and singular, the state, county and other taxes which may be legally levied on the said property, or any part thereof; and after the said payments are made, the said receivers are authorized to use the surplus earnings in the payment and discharge of all past due obligations of said Ohio & Mississippi Railway Company incurred for labor done or supplies furnished in the actual operation of said line of railroad or branches, at any time during the four months immediately preceding the entry of this order; in the discharge of their duties as such receivers, they are authorized to employ, retain and discharge, from time to time, at their discretion, all such agents and employes which they may deem necessary or proper to efficiently operate the said trust property, and they are directed to open proper books of account, and state thereon the receipts and disbursements of their said trust, and shall from time to time make and file with the clerk of this court monthly reports of their trusts.

This order as to the appointment of receivers, and as to so much of the mortgage property as is situated beyond the jurisdiction of this court, is made subject to the approval

of orders to be made in the Circuit Court of the United States for the Southern District of Illinois, and the Circuit Court of the United States for the Southern District of Ohio, in supplemental proceedings to be instituted by the complainants in the said court, for the recognition of the receivers hereby appointed, and vesting them with full powers to act in such districts.

And it further appearing to the court that in a certain suit in equity pending in the Circuit Court of the United States for the Southern District of Illinois, on the 18th day of November, 1876, a certain interlocutory order was made and entered, recognizing and appointing said Torrance and King as such receivers, and investing them as such with like powers as to the mortgaged premises and property, so far as the same is within the jurisdiction of said last-named court.

And it further appearing to the court that the said receivership ought to be so extended as to embrace all the subjects and matters in said bill of complaint, so far as the same are within the jurisdiction of this court.

It is, therefore, adjudged and decreed that the said Daniel Torrance and John King, Jr., be, and they are, hereby appointed receivers of the said mortgaged premises and property, so far as the same are, or may come within the jurisdiction of this court, with all the powers, rights and privileges, and subject to the limitations, duties and restrictions in said order of the Circuit Court for the District of Indiana aforesaid specified, including the duty to make and file monthly reports in this court, this appointment to take effect and be in force from and after the filing in the clerk's office of this court of separate bonds, one by each receiver with sureties to the satisfaction of the clerk, said bonds to stand and operate as security for the performance by said receivers of the duties within the jurisdiction of this court,

as effectually and to the same extent as the said bonds required in the District of Indiana, the penal sum of each bond to be the sum on one hundred thousand dollars.

And it is further ordered that in the discharge of their duties as such receivers, they, the said Torrance and King as such receivers, shall receive from and pay to all other and connecting railway companies, any and all balances of money due, and to grow due on account of the transportation of freight and passengers; that they may bring, prosecute and defend suits, including suits now pending for or against said company; that they may pay all bridge tolls due or to become due for the passage and crossing of the trains operated upon said railway, from and into the cities of St. Louis and Louisville, across and over the Ohio and Mississippi rivers, respectively, upon the bridges which span said rivers at said cities, and said receivers are further required in the payment of wages and supplies to pay each, as may have accrued within six months prior to the maturing of this order; and further, that they open and keep a bank account in the Commercial Bank of Cincinnati, in which they shall deposit, subject to their check or that of their authorized treasurer, from time to time, a proportion of their receipts at least equal to the proportion of the whole property coming into their hands, which may be within the State of Ohio.

[*Properly certified.*]

EXHIBIT No. 4.

COMMONWEALTH OF KENTUCKY, LOUISVILLE CHANCERY COURT—ss.

ROBERT GARRETT & SONS, *Plaintiffs*,
vs.
OHIO & MISSISSIPPI RAILWAY CO., Etc., *Defendants.*

At a court held for the court aforesaid on the 24th day of November, 1876:

This day came the plaintiffs by Gibson & Gibson, their

counsel, and moved the court to appoint a receiver of the property and assets of the defendant, the Ohio & Mississippi Railway Company, as prayed for in their petition, and, it appearing to the court from the answer of the said defendant filed herein, that said defendant consents to the appointment of a receiver of its property and assets as prayed for in said petition, it is, therefore, considered by the court that the said motion of plaintiff for the appointment of a receiver as aforesaid, be and the same is hereby sustained.

It is, therefore, adjudged by the court that Daniel Torrance and John King, Jr., be, and they are, hereby appointed receivers of the property, franchises and assets of the said Ohio & Mississippi Railway Company, and especially all and singular the line of railroad of said Railway Company in the petition described, extending from Cincinnati, Ohio, by way of Vincennes, Indiana, to East St. Louis, in the State of Illinois, together with the branch line extending from North Vernon, in the State of Indiana, to the city of Louisville, Kentucky, and the branch extending from Shawneetown, Illinois, through Springfield, Illinois, to Beardstown, Illinois, together with all equipments, appurtenances, fixtures, supplies, materials, books, papers and accounts, belonging or appertaining thereto, or used in stating the accounts of said corporation, and all moneys, assets and other property belonging to the same.

And the said receivers are ordered to each execute bond to the commonwealth of Kentucky, in the sum of five thousand dollars, with surety to be approved by the court, conditioned for the faithful discharge of their duties as such receivers, and for their obedience to the orders of this court; and upon the execution and approval of such bonds, said receivers are ordered to forthwith enter into possession and management of all and singular the said property of which they are appointed receivers, and for the purpose of execut-

ing the trust with which they are herewith invested. They are hereby authorized to use and employ in the operation and maintenance of said railway, all of the property franchises of the said Ohio & Mississippi Railway Company, as fully and completely in every respect as the said corporation might lawfully do under its charter, and the laws of the several States where its property is situated; and during all such possession the said receivers are authorized to levy and collect tolls and receive all the income derived therefrom, and hold and disburse the same under the orders of this court, from time to time, in the premises; and all the officers, agents and employes of the said Ohio & Mississippi Railway Company are ordered and required forthwith, on the demand of the said receivers, to disclose and deliver over to such officers of this court, all and singular the property, books, papers, moneys, and assets of the said corporation, in their control, possession or authority, and all such officers, agents and employes are hereby enjoined and restrained from in any manner interfering with the possession of said receivers, or their management of such trust property; and out of the moneys which from time to time come into their hands as such receivers from the operation of said trust property, they are authorized and required to pay all the operating expenses incurred in managing said trust property, and the further expenditures for necessary and proper repairs and renewals to keep said trust property in an efficient state to discharge its duty as a public carrier, and shall also pay all and singular the State and city taxes, and other taxes and assessments which may be legally levied upon the said property thereof, and after the said payments are made, the said receivers are authorized to use the surplus earnings in the payment and discharge of all past due obligations of said Ohio & Mississippi Railway Company, incurred for labor done or supplies furnished in the actual operation of said line of railroad or branches, at any time during the